RESOLUTIONS, AND DECISIONS OF Divers *Practical Cases of* CONSCIENCE

In continual Use amongst Men,

Very necessary for their Information and Direction in these evil Times.

In four Decades.

The fourth Edition, with some ADDITIONALLS.

By Jas. Hall, B. *Norwich.*

LONDON, Printed by *R. Hodgkinson*, and *F. Grismond*, 1659.

XUM

VERA EFFIGIES REVERENDI D OMI.
IOSEPHI HALL NORWICI EPISCOPI

This Picture represents the Forme, where dwells
A Mind, with nothing but that Mind excells.
There Wildome, Learning, Witt there Grace & Love
Rule over all the rest: enough to prove,
Against the frouard Conscience of this Time
The reverend name of BISHOP is no Crime.

XUM

To the READER.

OF all *Divinity* that part is most useful, which determines cases of Conscience; and of all cases of Conscience thy Theological are most necessary, as action is of more concernment than speculation; and of all Practical Cases those which are of most common use are of so much greater necessity and

benefit to be resolved, as the errors thereof are more universal; and therefore more prejudicial to the society of mankind: These I have selected out of many; and having turned over divers Casuists, have pitched upon these Decisions, which I hold most conformable to enlightened reason, and religion: sometimes I follow them, and sometimes I leave them for a better Guide.

In

In the handling of all which, would I have affected that course, which *Seneca* blames in his *Albutius*, to say all that might be spoken, I could easily have been more Voluminous, though perhaps not more satisfactory. If these lines meet with different judgements, I cannot blame either my self or them. It is the opinion of some Schoolmen (which seems to be made good by that

instance in the Prophet *Daniel* *) that even the good Angels themselves may holily vary in the way, though they perfectly meet in the end: It is farre from my thoughts to obtrude these my Resolutions as peremptory, and magisterial upon my Readers, I onely tender them submissely, as probable advises to the simpler sort of Christians;

*) Dan. 10. 13. 20 11. 13. 1.

and

and as matter of grave censure to the learned.

May that infinite Goodnesse to whose only glory I humbly desire to devote my self and all my poore indeavours, make them as benficial, as they are welmeant to the good of his Church, by the unworthiest of his Servants

J.H.B.N.

Higham neer *Norwich*,
March 29. 1650.

XUM

The CONTENTS of the first Decade.

Cases of Profit and Traffique.

I. WHether it be lawfull for me to raise any profit by the loan of Money? p. 1

II. Whether may I not sell my wares as deare as I can, and get what I may of every Buyer? 13

III. Whether is the Seller bound to make known to the Buyer, the faults of that which he is about to sell? 19

IV. Whether may I sell my commodi-

X ties

ties the deares for giving dayes of payment? 24

V. *Whether and how farre Monopolies are, or may be lawfull?* 30

VI. *Whether and how farre doth a fraudulent bargain binde me to performance?* 38

VII. *How farre and when am I bound to make restitution of another mans goods remaining in my hands?* 47

VIII. *Whether and how farre doth a promise extorted by fear, though seconded by an oath, binde my Conscience to performance?* 54

IX. *Whether those moneys, or goods which I have found may be safely taken, and kept by me to my own use?* 61

X. *Whether I may lawfully buy those goods, which I shall strongly suspect, or know to be stolen, or plundered, or if I have ignorantly bought such goods, whether I may lawfully (after knowledge of their owner) keep them as mine?* 66

The CONTENTS of the second *Decade*.

Cases of Life and Liberty.

I. *WHether and in what cases it may be lawfull for a man to take away the life of another?* p. 71

II. *Whether may I lawfully make use of a Duel for the deciding of my right, or the vindication of my honour?* 81

III. *Whether may it be lawfull, in case of extremity, to procure the abortion of the Child, for the preservation of the Mother?* 89

IV. *Whether a man adjudged to perpetuall imprisonment, or death, may in conscience indeavour, and practise an escape?* 101

V. *Whether and how far a man may be urged to an Oath?* 108

VI. *Whether a Judge may upon allegations, proofs and evidences of others, condemn a man to death, whom he himself certainly knows to be innocent?* 117

VII. *Whether, and in what cases am I bound to be an accuser of another?* 129

VIII. *Whether a Prisoner indicted of a fellonious act, which he hath commit-*

ted

ted; and interrogated by the Judge concerning the fact, may stand upon the denial, and plead not guilty? 136

IX. Whether and how far a man may take up armes in the publique quarrell of a warre? 143

X. Whether and how far a man may act towards his own death? 150

The Contents of the third Decade.

Cases of Piety and Religion.

I. Whether, upon the appearance of evill Spirits, we may hold discourse with them, and how we may demean our selves concerning them? 161

II. *How farre a secret pact with evil Spirits doth extend; and what actions and events must be referred thereunto?* 174

III. *Whether reserving my Conscience to my self, I may be present at an Idolatrous devotion? or whether in the lawfull service of God I may communicate with wicked persons?* 183

IV. *Whether vowes be not out of fashion now under the Gospel; of what things they may be made; how farre they oblige us; and whether and how farre they may be capable of a release.* 192

V. *Whom may we justly hold an Heretique? and what is to be done in case of Heresie.* 201

VI. *Whether the lawes of men doe binde the Conscience? and how farre we are*

are tyed to obey the Clergie? 210

VII. *Whether Tithes be lawfull maintenance for Ministers under the Gospel? and whether men be bound to pay them accordingly?* 215

VIII. *Whether it be lawfull for Christians, where they finde a Country possessed by Savage Pagans and Infidels, to drive out the native Inhabitants, and to seize upon and enjoy their lands upon any pretence whatsoever; and upon what grounds it may be lawfull so to do?* 233

IX. *Whether I need in case of some foul sinne committed by me to have recourse to Gods Ministers for absolution; and what effect I may expect there-from.* 249

X. *Whether it be lawfull for a man that is not a professed Divine, that is (as*

we

we for distinction are wont to call him) for a meer Laick person, to take upon him to interpret Scripture? 262

The CONTENTS of the fourth *Decade*.

Cases Matrimonial.

I. *Whether the Marriage of a Son or Daughter, without or against the Consent of Parents, may be accounted lawfull?* 285

II. *Whether marriage lawfully made may admit of any cause of Divorce save onely for the violation of the Marriage-bed by fornication, or adultery?* 296

III. *Whether after a lawfull Divorce for adultery, the innocent party may marry again?* 311

IV. *Whether the authority of a Father may reach so farre as to command, or compell the Child to dispose of himselfe in Marriage where he shall appoint?* 322

V. *Whether the marriage of Consens-german, that is, of Brothers and Sisters children be lawfull?* 331

VI. *Whether it be necessary, or requisite there should be a witnessed contract, or Espousals of the Parties to be married before the solemnization of the marriage?* 343

VII. *Whether there ought to be a prohibition, and forbearance of marriages, and marriage-duties for some times appointed?* 353

VIII. *Whether it be necessary that marriages should be celebrated by a Minister? and whether they may be valid, and lawfull without him?* 361

IX. *Whether there be any necessity or use of thrice publishing the Contract of marriage in the Congregation before the celebration of it; and whether it be fit that any Dispensation should be granted for the forbearance of it?* 366

X. *Whether Marriages once made, may be annulled, and utterly voided? and in what cases this may be done?* 372

ADDI-

ADDITIONALS to the fourth *Decade*.

I. *WHether a Marriage consummate betwixt the Unkle and Neece be so utterly unlawfull, as to merit a sentence of present separation?* 383

II. *Whether it be lawfull for a man to marry his Wives Brothers Widow?* 406

III. *Whether an incestuous Marriage contracted in simplicity of heart betwixt two Persons ignorant of such a defilement, and so farre consummate as that Children are borne in that wedlock, ought to be made known and prosecuted to a dissolution?* 412

I Have perused these four Decades of Practicall Cases of Conscience with much satisfaction and delight, and finde them to be, in respect of their subject matter, so profitable, necessary and daily usefull; and so piously, learnedly and judiciously discussed and resolved, that they seem unto me best, though they come last, (like the Wine in the marriage feast made sacred by Christs divine presence and miracle) and therefore doe well deserve (amongst many other the divine dishes and delicacies, wherewith this right reverend, pious and learned Author hath plentiously furnished a feast for the spirituall nourishment and comfortable refreshing of Gods guests) both the approbation and commendation of all, and my self amongst the rest, though unworthy to passe my censure on such a subject.

John Downam.

RESOLUTIONS.

The first Decade.

Cases of Profit and Trafick.

Quest. I.

Whether is it lawfull for me to raise any profit by the loane of money?

You may not expect a positive answer either way. Many circumstances are considerable ere any thing can be determined.

First, who is he that borrowes? A poore neighbour that is constrained out of neede? or a Merchant that

takes up money for a freer trade? or a rich man that layes it out upon superfluous occasions?

If a poor man borrow out of necessity, you may not expect any profit for the loane: (*Deuteronomy* 15. 7. 8. 9.) To the poorest of all we must give, and not lend: to the next rank of poor we must lend freely: but if a man will borrow that money (which you could improve) for the enriching of himself; or out of a wanton expence will be laying out that which might be otherwise usefull to you, for his meer pleasure, the case is different; for God hath not commanded you to love any man more than yourself: and there can be no reason why you should vail your own just advantage to another mans excesse.

Secondly, upon what terms doe you lend? whether upon an absolute compact for a set increment, (what ever

ever become of the principall or upon a friendly truſt to a voluntary ſatisfaction according to the good improvement of the ſumme lent: The former is not ſafe, and where there hath been an honeſt endeavour of a juſt benefit diſappointed either by unavoidable caſualty, or force, may not be rigorouſly urged, without manifeſt oppreſſion. The latter can be no other than lawfull, and with thoſe that are truly faithfull and conſcionable, the bond of gratitude is no leſſe ſtrong than that of law and juſtice.

Thirdly, if upon abſolute compact, is it upon a certainty, or an adventure? for where you are willing to hazard the principall, there can be no reaſon but you ſhould expect to take part of the advantage.

Fourthly, where the trade is ordinarily certain, there are yet farther conſiderations to be had: to which

I shall make way by these undeniable grounds.

That the value of moneys or other commodities is arbitrable according to the soveraign authority and use of severall Kingdomes and Countries.

That whatsoever commodity is saleable, is capable of a profit in the loan of it; as an horse, or an oxe, being that it may be sold, may be let out for profit.

Money it self is not onely the price of all commodities in all civill Nations, but it is also, in some cases, a traffiqueable commodity: the price whereof rises, and falls in severall countries upon occasion; and yeeldeth either profit or losse in the exchange.

There can be no doubt therefore but that money thus considered, and as it were turned merchandise, may be bought and sold, and improved to a just profit. But

But the main doubt is, whether money meerly conſidered as the price of all other commodities, may be let forth for profit, and be capable of a warrantable increaſe. For the reſolving whereof be it determined,

That all uſury, which is an abſolute contract for the meer loane of money, is unlawfull both by law natural, and poſitive, both divine and humane.

Nature teacheth us that metals are not a thing capable of a ſuperfetation, that no man ought to ſet a price on that which is not his own time: that the uſe of the ſtock once received, is not the lenders, but the borrowers, for the power, and right of diſpoſing the principal, is by contract transferred for the time to the hands of him that receives it; ſo as he that takes the intereſt by vertue of ſuch tranſaction, doth but in a man-

rarely and legal fashion rob the borrower.

How frequent the * Scripture is in the prohibition of this practice, no Christian can be ignorant: And as for humane lawes raised even from the meer light of Nature amongst Heathen Nations, how odious, and severely interdicted usurary contracts, have been in all times, it appears sufficiently by the Records which we have of the Decrees of (a) *Egypt*, of *Athens*, of *Rome*; and not onely by the restraint of the Twelve Tables, and of *Claudius* and *Vespasian*, but by the absolute forbiddance of many popular Statutes condemning this usage: *Tiberius* himself, though otherwise wicked enough, yet would rather furnish the Banks with his own stock, to be freely lent out for

* Exod. 22. 25. Levit. 25. 36. 37. Deut. 23. 19. 20. Nehem. 5. 7. Psal. 15. 5. Prov. 28. 8. Ezek. 18. 8.
(a) Vid. Alexand. ab Alexand. Gen. dierum l. 2. c. 17.

three

three years to the Citizens, upon onely security of the summe doubled in the forfeiture, then he would endure this griping and oppressive usurie. And how wise *Cato* drove usurers out of *Sicilie*, and *Lucullus* freed all *Asia* from this pressure of Interest, History hath sufficiently recorded.

As for Lawes Ecclesiastical, let it be enough that a * Councel hath defined, that to say usury is not a sinne, is no better than heresie; and in succeeding times how liable the usurer hath ever been to the highest censures of the Church, and how excluded from the favour of Christian burial, is more manifest than to need any proof.

Secondly, however it is unlawfull to covenant for a certain profit for the mere loane of money, yet there may be, and are circumstances ap-

* Concil. Viennense.

pending to the loane, which may admit of some benefit to be lawfully made by the lender for the use of his money, and especially these two, the losse that he sustaines, and the gain that he misses, by the want of the summe lent. For what reason can there be, that to pleasure another man, I should hurt my self, that I should enrich another by my own losse?

If then I shall incurre a reall losse or forfeiture by the delayed payment of the summe lent, I may justly look for satisfaction from the borrower; yea if there be a true danger of losse to me imminent, when the transaction is made, nothing hinders but that I may by compact make sure such a summe as may be sufficient for my indemnity; And if I see an opportunity of an apparant profit that I could make fairly by disbursing of such a summe *bona fide*, and another

ther that hath a more gainfull bargain to chuse shall sue to me to borrow my money out of my hand for his own greater advantage, there can be no reason why in such a case I should have more respect to his profit, then my own; and why should I not even upon pact, secure unto my self such a moderate sum as may be somewhat answerable to the gain which I doe willingly foregoe, for his greater profit? Since it is a true ground which *Lessius* (with other Casuists) maintains against *Soto* and *Durand*, that even our hopes of an evident commodity are valuable, and that no lesse than the feares of our losse.

Shortly, for the guidance of our, either caution, or liberty in matter of borrowing, and lending, the onely Cynosure is our *charity*; for in all humane and civill acts of Commerce, it is a sure rule, That what-

soever is not a violation of Charity cannot be unlawfull, and whatsoever is not agreeable to charity can be no other then sinfull: And as Charity must be your rule, so your self must be the rule of your Charity; Look what you could wish to be done to you by others, doe but the same to others, you cannot be guilty of the breach of Charity: The maximes of Traffique are almost infinite; onely Charity (but ever inseparable from Justice) must make the application of them; That will teach you that every increase by loane of money is not usurary; and that those which are absolutely such, are damnable: that will teach you to distinguish betwixt the one improvement of loane, and the other; and will tell you that if you can find out a way, whether by loane, or sale, to advance your stock, that may be free from all oppression, and extortion; and beneficial as well

well to others, as to your selfe: you need not fear to walk in it with all honest security; but in the mean time take good heed that your heart beguile you not in mis-applications; for we are naturally too apt out of our self-love to flatter our selves with fair glozes of bad intentions, and rather to draw the rule to us then our selves to the rule.

But whiles I give you this short solution, I must professe to lament the common ignorance, or mistaking of too many Christians, whose zeal justly cryes down usury as a most hatefull and abominable practice, but in the mean time makes no bones of actions no lesse biting, and oppressive: they care not how high they sell any of their commodities, at how unreasonable rates they set their grounds, how they circumvent the buyer in their bargains, and think any price just, any gain lawfull that they can

make

make in their markets; not considering that there is neither leſſe, nor leſſe odious uſury in ſelling and letting, then there is in lending? It is the extortion in both that makes the ſin, without which the kind or termes of the tranſaction could not be guilty. Surely it muſt needs be a great weakneſſe to thinke that the ſame God who requires mercy and favour in lending, will allow us to be cruel in ſelling; Rigour and exceſſe in both equally violates the law of commutative Juſtice, equally croſſes the law of Charity: Let thoſe therefore that make ſcruple of an uſurious lending, learn to make no leſſe conſcience of a racking bargain, otherwiſe their partial obedience will argue a groſſe hypocriſie, and they ſhall prove themſelves the worſt kinde of what they hate, uſurers: For in the ordinary loſſe uſury, the borrower hath yet time to boot for his money, but here

the

the buyer payes down an excessive interest, without any consideration at all, but the sellers cruelty. For the fuller clearing of which point, where as you ask,

Case II.

Whether may I not sell my wares as dear as I can, and get what I may of every buyer?

I answer,

There is a due price to be set upon every saleable commodity; else there were no commerce to be used among men. For if every man might set what rate he pleases upon his lands or goods, where should he finde a buyer? surely nothing could follow but confusion, and want; for mere extremity must both make the market and regulate it.

The due price is that which cuts equally

equally and indifferently betwixt the buyer and seller, so as the seller may receive a moderate gain, and the buyer a just penny-worth.

In those countries wherein there is a price set by publique authority upon all marketable commodities, the way of commerce is well expedited, and it is soon and easily determined, that it is meet men should be held close to the rule.

But where all things are left to an arbitrary transaction, there were no living, if some limits were not set to the sellers demands.

These limits must be the ordinary received proportion of price current in the several countries wherein they are sold; and the judgement of discreet, wise, experienced and unconcerned persons, and the wel-stated conscience of the seller.

If men shall wilfully run beyond these bounds, taking advantage of the

the rarenesse of the commodity, the paucity or the necessity of the buyers to enhance the price to an unreasonable height, they shall be guilty of the breach of charity, and in making a sinfull bargain purchase a curse.

Not that a man is so strictly tyed to any others valuation, as that he may not upon any occasion take or receive more than the common price; or that if the market rise he is bound to sit still: There may be just reason upon a general mortality of cattle to set those beasts that remain at an higher rate, or upon a dearth of grain, or other commodities, to heighten the price; but in such cases we must be so affected as that we grudge to our selves our own gain, that we be not in the first file of enhancers, that we strive to be the lowest in our valuation, and labour what we may to bring down the market; alwaies putting our selves in our con-

conceits into the buyers room, and bethinking how we would wish to be dealt with, if we were in his cloathes.

It is lawfull for the seller in his price to have regard not to his rents and disbursements onely, but to his labour, and cost, to his delay of benefit, to his losse in managing, to his hazard or difficulty in conveyance; but all these in such moderation, as that he may be a just gainer by the bargain: not setting the dice upon the buyer, not making too much haste to be rich by the secret spoiles of an oppressed neighbour.

Those things whose end is onely pleasure or ornament, as a Jewel, an Hawk, or an Hound, can admit of no certain value; the owners affection must estimate it, and the buyers desire must make up an illimited bargain; but even in these, and all other commodities that carry the face of unnecessary, Conscience must be the

Clerk

Clerk of the Market; and tell us that we must so sell, as we could be willing to buy. From all which it followes,

That the common maxime current * in the shops of trade, that things are so much worth as they can be sold for; and those ordinary rules of chapmen, that men who are masters of their wares may highten their prices at pleasure, and get what they can out of all commers; and what ever they can get out of the simplicity, or necessity of the buyers, is lawfull prize, are damnably uncharitable and unjust.

It were an happy thing, if as it is in some other well ordered nations, there were a certain regulation of the prices of all commodities by publique authority, the wisdome whereof knows how to rise and fall accor-

* Dom. Sot de Justit. & Jure l. 6. quæst. 2. Artic. 3. tradit hoc ut Axioma Jurisconsultorum.

ding

ding to the necessity of the occasion; so as the buyer might be secured from injury, and the seller restrained from a lawlesse oppression. But where that cannot be had, it is fit that Justice and Charity should so far overrule mens actions, that every man may not be carryed in matter of contract, by the sway of his own unreasonable will, and be free to carve for himself as he lists of the buyers purse: every man hath a bird in his bosome that sings to him another note.

A good conscience therefore will tell you that if (taking advantage of the ignorance or unskilfulnesse of the buyer) you have made a prey of him by drawing from him double the worth of the commodity sold, you are bound to make restitution to him accordingly, and in a proportion so, in all the considerable summes which you shall have by your false protestations,

tions, and oathes, and plausible intimations wrought out from an abused buyer; above that due price which would make you a just and rightly moderated gainer: For assure yourself, all that you willingly doe this way is but a better-coloured picking of purses; and what you thus get is but stoln goods varnisht over with the pretence of a calling, and will prove at the last no other than gravel in your throat.

Case III.

Whether is the seller bound to make known to the buyer the faults of that which he is about to sell?

IT is a question that was long since disputed betwixt the Heathen Sages, *Antipater* and *Diogenes*, as *Cicero** informs us: with whom *Cato*

* Tul. de Offic. l. 3.

so

so decides it as that his judgement may justly shame and condemn the practice of too many Christians: For a full answer, due consideration must be had of divers circumstances.

First, what the nature and quality of the fault is; whether it be sleight and unimporting? or whether such as may vitiate the thing sold, and render it either unuseful or dangerous to the buyer? or again, whether the fault be apparent, or secret: both these doe justly vary the case: sleight and harmlesse faults may be concealed without injustice; main and importing must be signified: if apparent defects be not discerned by the buyer he may thank himself; secret faults known onely to the seller, (such as may be prejudicial to the buyer) ought not to be concealed, or if they be concealed so, as that the buyer payes for it as sound and perfect, binde the seller in conscience,

either

either to void the bargain, or to give juſt ſatisfaction.

Secondly, it would be conſidered, whether the buyer before the bargain be ſtricken, hath required of the ſeller to ſignified the faults of the commodity to be ſold, and out of a reliance upon the ſellers fidelity and warrant, hath made up the match; or whether in the confidence of his own skill, without moving any queſtion, he enter reſolutely, (*de bene eſſe*) upon the bargained commodity: If the former, a double bond lyes upon the ſeller to deal faithfully with the buyer, and therefore to let him know the true condition of the thing expoſed to ſale, that ſo either he may take off his hand; or if he ſhall ſee that notwithſtanding that defect it may ſerve his turn, he may proportion the price accordingly; otherwiſe he ſhall be guilty (beſides falſhood and oppreſſion) of perfidiouſneſſe,

ousnesse. But if the buyer will peremptorily rely upon his own judgement, and as presuming to make a gain of that bargain (which the seller out of conscience of the imperfection, sets (as he ought) so much lower as the defect may be more disadvantageous to the buyer) will goe through with the contract, and stand to all hazards, I see no reason why the seller may not receive the price stipulated; but withall if the match may carry danger in it to the buyer, (as if the horse sold bee subject to a perilous starting, or stumbling; the house sold have a secret crack that may threaten ruine; or the land sold be lyable to litigious claim which may be timely avoyded) the seller is bound in conscience (at least after the bargain) to intimate unto the buyer these faulty qualities, that he may accordingly provide for the prevention of the mischief that may ensue.

But

But if the ſeller ſhall uſe art to cover the defects of his commodity, that ſo he may deceive the buyer in his judgement of the thing bargained for, or ſhall mix faulty wares with ſound, that they may paſſe undiſcovered, he is more faulty then his wares, and makes an ill bargain for his ſoule. In this, ſhortly, and in all other caſes that concern trade, theſe univerſal rules muſt take place. That it is not lawfull for a Chriſtian chapman to thrive by fraud. That he may ſell upon no other terms then he could wiſh to buy. That his profit muſt be regulated by his conſcience, not his conſcience by his profit. That he is bound either to prevent the buyers wrong, or if needfully done, to ſatisfie it. That he ought rather to affect to be honeſt, then rich. And laſtly, that as he is a member of a community both civill and Chriſtian, he ought to be tender of

another

another mans indemnity no lesse than of his own.

CASE IV.

Whether may I sell my commodities the dearer for giving dayes of payment?

THere is no great difference betwixt this case, and that of loan, which is formerly answered; save that there money is let, here commodities money-worth; here is a sale, there a lending; in the one a transferring of the right and command for the time, in the other perpetually; but the substance both of the matter and question is the same; for in both there seems to be a valuation of time: which whether in case of mutuation, or sale, may justly be suspected for unlawfull.

For

For anſwer;

There are three ſtages of prices acknowledged by all Caſuiſts; the higheſt, which they are wont to call Rigorous; the mean, and the loweſt. If theſe keep within due bounds, though the higheſt be hard, yet it is not unjuſt, and if the loweſt be favorable, yet it is not alwayes neceſſary.

If then you ſhall proportion but a juſt price to the time, and worth of your bargain, ſo as the preſent ſhall paſſe for the eaſieſt price, ſome ſhort time for the mean, and the longer delay for the higheſt, I ſee not wherein, all things conſidered, you doe offend.

And certainly to debar the contract of a moderate gain for the delay of payment upon moneths prefixed, were to deſtroy all trade of merchandiſe. For not many buyers are furniſhed with ready money to

buy their wares, at the Port; nor could the sellers make off their commodities so seasonably, as to be ready for further traffique, if they must necessarily be tyed to wait upon the hopes of a pecuniary sale, and not left to the common liberty of putting them over to whole-sale men upon trust, who upon a second trust distribute them to those that vent them by retail, both for days agreed upon: By which means the trade holds up, and the common-wealth enjoyes the benefit of a convenient and necessary commerce.

A practise that is now so habituated amongst all nations into the course of trade, that it cannot well consist without it; So as nothing is more ordinary in experience than that those, who are able to pay down ready money for their wares, know to expect a better penyworth, than those that run upon trust. And there

there may be just reason for this difference; For the present money received, enables the seller to a further improvement of his stock, which lies for the time dead in the hands that take day for their payment.

So then, it is not meere time that is here set to sale, which were odious in any Christian to bargain for; but there are two incidents into this practice which may render it not unwarrantable. The own is the hazard of the sum agreed upon; which too often comes short in the payment; whiles those subordinate chapmen, into whose hand the grosse sum is scattered turn bankrupts, and forfeit their trust; so as no small losse is this way commonly sustained by the confident seller; in which regard we are wont to say justly, that One bird in the hand is worth two in the wood. The other is the cessation of that gain which the merchant might

to the mean time have made of the sum deferred; which might in likelihood have been greater than the proportion of the raised price can amount unto, to which may be added the foreseen probability of the raising of the market in the interval of payment: the profit whereof is precluded by this means to the seller, whose full engagement takes him off perhaps from a resolution to have reserved those commodities in his own hands, in expectation of an opportunity of a more profitable utterance, had not the forwardnesse of the buyer importuned a prevention.

Upon these considerations, if they be serious and unfained, I see not why you may not in a due and moderate proportion, difference your prices according to the delayes of payment, without any oppression to the buyer: Howbeit, if any man pleaseth to be so free, as to take no

notice

notice of time, but to make future dayes in his account present, I shall commend his charity, though I dare not presse his example as necessary.

The case is equally just on the behalf of the seller: who if he be either driven by some emergent necessity, or drawn by the opportunity of a more gainfull bargain, to call for his money before his day, may justly be required by the late buyer, to abate of the returnable summe, in regard of the prevention of the time covenanted, by reason of the inconvenience or losse thereupon he is put upon the suddain revocation of that money, which is not by agreement payable till the expiration of the time prefixed. But what quantity is to be allowed on the one part, or defalked on the other, is onely to be moderated by Christian Charity, and that universal rule of doing what we would be willing to suffer.

CASE V.

Whether, and how farre, Monopolies are, or may be lawfull.

THe most famous Monopolie that we find in history is that of *Egypt*, *Gen.* 41. 56, 57. wherein the provident Patriarch *Joseph*, out of the fore-sight of a following dearth, bought up the seven years grain for *Pharoah*, and laid it up in publique store-houses; and in the general scarcity sold it out to the inhabitants, and strangers, with no small advantage; which was so farre from unlawfull, as that he thereby merited the name of the Saviour of *Egypt* * and if any worthy Patriot out of a like providence, shall before-hand gather up the commodities of his country into a publique Magazine

* So the Vulgar renders *Zaphnath paaneah* Salvator mundi, Gen. 41 45.

for the common benefit and relief of the people, upon the pinch of an ensuing necessity, he is so farre out of the reach of censure, as that he well deserves a statue with the inscription of Publique Benefactor; So as it is not the meer act of Monopolizing that makes the thing unlawfull, but the ground and intention, and the manner of carriage.

All Monopolies, as they are usually practised, are either such as are allowed by Soveraign authority, or privately contrived by secret plot and convention for a peculiar gain to some special persons. If the first, it must be considered upon what reason that priviledge is granted, and upon what termes; If both these be just, the grant can be no other. For first, it may not be denied, that supreme authority, whether of Princes or States, hath power to grant such priviledges where they shall finde just

cause; and secondly, that there may be very just motives of granting them to some capable and worthy persons; I should be ashamed to imagin that either of these should need any probation.

Doubtlesse then, there is manifest equity, that where there hath been some great merit, or charge, or danger in the compassing of some notable work for a common good, the undertaker should be rewarded with a patent for a secured profit to himself. As put case some well minded Printer (as one of the *Stephens*) is willing to be at an excessive charge in the fair publication of a learned and usefull work for the benefit of the present and following ages; it is most just that he should from the hands of Princes or States receive a Priviledge for the sole impression; that he may recover, with advantage, the deep expence he hath been at;

Other-

Otherwise some Interlopes may perhaps underhand fall upon the work at a lower rate, and undoe the first editor, whose industry, care and cost shall thus be recompenced with the ruine of himself and his posterity; as were too easie to instance.

If a man have by notable dexterity of wit, and art, and much labour and charge after many experiments, attained to the skill of making some rare engine of excellent use for the service of his Prince and Country, as some singular water-work, or some beneficiall instrument for the freeing of navigable rivers from their sandy obstructions, it is all the reason in the world, that by the just bounty of Princes he should be so far remunerated, as that he alone may receive a patent of enjoying a due profit of his own invention.

But how farre it may be lawfull for a Prince, not onely to gratifie a

well deserving Subsidy, with the fee of his own devise, but with a profit arising from the sole sale of marketable commodities through his Kingdome; or whether, and how far in the way of monies, for the necessary service of his State, he may for the publique use, raise, set, or sell monopolies of that kinde, is diversly agitated by Casuists, and must receive answer according to the absolute rule or limitation of those Governments, under which they are practised. But with this, that where this is done, there may be great care had of a just price to be set upon the commodities so restrained, that they be not left to the lawlesse will of a privileged ingrosser, nor brought to an undue rate by reason of a particular indulgence.

This may be enough for authoritative Monopolies. The common sort of offensive practices this way

are

ate private and single, or conventionall, and plotted by combination. The former, as when some covetous extortioner, out of the strength of his purse, buyes up the whole lading of the ship, that he may have the sole power of the wares to sell them at pleasure, which, there is no fear but he will doe with rigour enough: The true judgment of which action, & the degrees of the maligaity of it, must be fetcht, as from the minde, so from the management of the buyer, as being so much more sinfull, as it partakes more of oppression. The latter, when some brethren in evill conspire to prevent the harvest, to buy up, or hoord up the grain, with a purpose to starve the market, and to hatch up a dearth: A damnable practice in both kindes, and that which hath of old been branded with a curse, neither lesse full of justice than uncharitablenesse, and that which cries

aloud

aloud, for a just punishment, and satisfactory restitution.

I cannot therefore but marvaile at the opinion of learned *Lessius* (which he fathers also upon *Molina*) that too favorably minces the hainousnesse of this sin, bearing us in hand, that it is indeed an offence against charity, and common profit, but not against particular Justice. His reason: To buy that corn (saith he) could not be against justice, for he bought at the current price: Nor yet to sell it, could be against justice, because he was not tyed out of justice at that time to bring it forth to sale: When he might easily have considered, that it is not the meere act of buying, or of not selling, that in it self is accused for unjust, but to buy, and not to sell, with an intention, and issue of oppressing others, and undue enriching themselves by a dearth. For what can be more unjust then for a man to

indeavour

indeavour to raise himself by the affamishing of others?

Neither can it serve his turn to say by way of excuse, that the multitude of buyers may be the cause of a dearth, and yet without sin; since they doe rather occasion, than cause a scarcity; and are so farre from intending a dearth in making their market, that they deprecate it, as their great affliction.

And if, by his own confession, those, who either by force, or fraud hinder the importation of corn, that a dearth may continue, are guilty of injustice, and are bound to make restitution both to the Commonwealth in giving cause to raise the price; as also to the Merchant, whom they have hindered of his meet gain, how can those be liable to a lesse sin, or punishment, that either buy up, or wilfully keep in their grain with a purpose to begin, and hold on a

dearth;

dearth? and what lesse can it be then force or fraud, that by their crafty and cruel prevention the poore are necessitated to want that sustenance, whereby their life should be maintained?

Wise *Solomon* shall shut up this Scene for me, *He that with-holds corn, the People shall curse him, but blessings shall be upon the head of him that selleth it*, Prov. 11. 26.

Case VI.

Whether and how farre doth the fraudulent bargaine binde me to performance.

How far in matter of law, you must advise with other Counsell, but for matter of conscience, take this:

Is the fraud actively yours done by you to another? or else passively put by

by another upon you? If the former, you are bound to repent and satisfie; either by rescinding the match, or by making amends for the injury: If the latter, wherein did the fraud lie? If in the main substance of the thing sold, the bargain is both by the very law of nature, and in conscience, void; yea indeed, not at all: as if a man have sold your copper lace for gold; or alchymie plate for silver; the reason is well given by [a] Casuists: There is no bargain without a consent; and here is no consent at all, whiles both parties pitch not upon the same subject; the buyer propounds to himself gold and silver, the seller obtrudes copper, and Alchymie; the one therefore not buying what the other pretended to sell, here is no bargain made, but a mere act of cozenage, justly liable to punishment by all the lawes of God and

[a] Lessius l. 2. c. 17. dub. 5.

man

man. But if the fraud were onely in some circumstances, as in some faulty condition of the thing sold not before discerned; or in the over-prizing of the commodity bought; the old rule is, *Caveat emptor*; You must (for ought I know) hold you to your bargain; but if that faulty condition be of so high a nature that it marres the commodity, and makes it uselesse to the buyer, the seller (being conscious of the fault) is injurious in the transaction, and is bound in conscience to make satisfaction; and if he have willingly over-reacht you in the price, in a considerable proportion is guilty of oppression.

It is very memorable in this kinde that *Cicero* relates to us of a fraudulent bargain betwixt * *Canius* a Roman Knight and Orator, and one *Pythius* a Banker of *Syracuse*. *Canius* comming upon occasion of pleading

* Cicero de Offic. l. 3. Sect. 58.

to the city of *Syracuſe*, tooke a great liking to the place, and ſeeling there, gave out that he had a great deſire to buy ſome one of thoſe pleaſant gardens, wherewith, it ſeems, that city abounded, that he might there recreate himſelf when he pleaſed, with his friends.

Pythias, a crafty merchant hearing of it, ſends word to *Canius*, that he had a fair garden which he had no minde to ſell; but if he pleaſed to make uſe of it for his ſolace, he might command it as his own; and withall courteouſly invites *Canius* to ſup with him there the day following. In the mean time being a man by reaſon of his trade of exchange, very gracious in the city, he calls the fiſhermen together, and deſires them that the next evening they would fiſh in the ſtream before his garden, and bring him what they ſhall have caught. *Canius* in due time comes

accor-

according to the invitation, to supper; where there was delicate provision made for him by *Pythius*; and store of boats bringing in their plentifull draughts of fish, and casting them down at the feet of *Pythius*: *Cæsius* askes the meaning of this concourse of Fishermen, and store of proffered provision? *Pythius* tells him this is the commodity and privilege of the place, if the *Syrenusæ* yeeld any fish, here it is caught, and here tendered; *Cæsius* believing the report, importunes his host to sell him the ground: the owner after some seeming loathnesse, and squeamish reluctation, at last yeelds to gratifie him with the bargain. The dear price is paid down with much eagernesse. The new master of the place, in much pride of his purchase, the next day repairs early to his garden, invites his friends to a Friday Feast; and finding no boat there, asks the neigh-

bour

boat whether it were holiday with the fiſherman, that he ſaw none of them there; No ſaid the good man, none that I know; but none of the trade uſe to fiſh here, and I much marvailed at the ſtrange confluence of their boats here yeſterday: The Roman Orator was down in the mouth; finding himſelf thus cheated by the money-changer; but, for ought I ſee, had his amends in his hands; He meant, and deſired to buy the place, though without any ſuch accommodation; but over-bought it upon the falſe pretence of an appendent commodity; the injury was the ſellers, the folly muſt be the buyers.

But if ſuch be the caſe, that you are meerly drawn in by the fraud, and would not have bought the commodity at all, if you had not been induced by the deceit, and falſe oathes and warrants of the ſeller, you

have

have just reason, either, if you may, to fall off from the bargain, or, if the matter be valuable, to require a just satisfaction from the seller; who is bound in conscience either by annulling the bargain, or abatement of price to make good your indemnity.

In these matters of contract there is great reason to distinguish betwixt a willing deceit, and an involuntary wrong: If a man shall fraudulently sell an horse which he knows secretly and incurably diseased to another for sound, and that other, believing the sellers deep protestation, shall upon the same price, *bona fide*, put him off to me; I feel my self injured, but whether shall I go for an amends? I cannot challenge the immediate seller, for he deceived me not; I cannot challenge the deceiver, for he dealt not with me; to humane laws I am left remediless; but in the law of con-

conscience, the first seller, who ought to have born his own burthen of an inevitable losse, is bound to transfer by the hands that sold me that injurious bargain, a due satisfaction.

Neither is it other-wise of fraudulent conveyances in the houses or land, however the matter may be intricated by passing thorough many (perhaps unknowing) hands, yet the sin and obligation to satisfaction, will necessarily lie at the first door; whence if just restitution doe not follow, the seller may purchase Hell to boot.

Think not now on this discourse, that the only fraud is in selling; there may be no lesse (though not so frequent) fraud in buying also; whether in unjust payment, by false coyne, or by injustice of quantities, as in buying by weights, or measures above allowance, or by wrong valuation of the substance & quality of the com-

commodity, unknown by the seller. As for instance, a simple man, as I have known it done in the Western parts, finds a parcell of Ambergris cast upon the sands; he perceiving it to be some ominous matter, puts it to the base use of his shooes, or his cart wheels; a merchant that smels the worth of the stuff buyes it of him for a small sum, giving him a shilling or two, for that which himself knows to be worth twenty pounds: the bargain is fraudulent, and requires a proportionable compensation to the ignorant seller into whose hands providence hath cast so rich a booty.

Shortly, in all these intercourses of trade, that old and just rule which had wont to sway the traffique of heathens, must much more take place amongst Christians, (*caveat bonis bene agere*) that honest men must be honestly dealt with: and therefore

bore that all fraud must be banished out of their markets; or, if it dares so intrude, soundly punished; and mulcted with a due satisfaction.

Case VII.

How far, and when am I bound to make restitution of another mans goods remaining in my hand?

Restitution is a duty no less necessary, than rarely practised amongst Christians. The Arch-publican *Zacheus* knew that with this he must begin his conversion; and that known rule of Saint *Austen** is in every mans mouth, No remission without restitution. For this act is no small peice of commutative Justice; which requires that every man should have his own: Most just therefore it is, that what you have taken, or

* Aug. epist. 54. ad Macedon.

be-

detained from the true owner should be restored; neither can it be sufficient, that you have conceived a dry and bootless sorrow for your wrongfull detention, unlesse you also make amends to him by a reall compensation.

But you are disabled to make restitution by reason of want, your will is good, but the necessity, into which you are fallen, makes you uncapable of performance: See first, that it be a true, and not fained necessity; Many a one, like to lewd Cripples that pretend false soares, counterfeit a need that is not, and shelter themselves in a willing Jaile, there living merrily upon their defrauded creditor, whom they might honestly satisfie by a well improved liberty. This case is damnably unjust; but if it be a true necessity of Gods making, it must excuse you for the time, till the same hand that did

cast

cast you down, shall be pleased to raise you up again; then, you are bound to satisfy: and in the mean time, lay the case truly before your creditor, who if he be not merciless, where he sees a real desire, and endeavour of satisfaction, will imitate his God in accepting the will for the deed, and wait patiently for the recovery of your estate.

You ask how, to whom you should tender restitution?

To whom, but to the owner? But he you say, is dead; That will not excuse you, he lives still in his heirs. It is memorable (though in a small matter) which *Seneca* reports of a Pithagorean Philosopher at *Athens*, who having run upon the score for his shooes at a shop there, hearing that the shoomaker was dead, at first was glad to think the debt was now paid; but straight recollecting himself, he sayes within himself; Yet, howso-

ever, the shoomaker lives still to thee though dead to others; and thereupon puts his money into the shop, as supposing that both of them would finde an owner. It is a rare case that a man dies, and leaves no body in whom his right survives: But if there be neither heire, nor executor, nor administrator, nor assigne, the poor (saith our Saviour) ye shall have always with you; Make thou them his heire: Turne your debt into almes.

Obj. But alas! you say, I am poor my self, what need I then look forth for any other? Why may not I employ my restitution to the relief of my own necessity?

Sol. It is dangerous, and cannot be just for a man to be his own carver altogether in a business of this nature, You must look upon this money, as no more yours than a strangers, and howsoever it be most true that every man

man is neareſt to himſelf, and hath reaſon to wiſh to be a ſhifter where the need is equall; yet it is fit this ſhould be done with the knowledge and approbation of others: Your Paſtor, and thoſe other that are by authority interreſſed in theſe publique cares, are fit to be acquainted with the caſe; (if it be in a matter meet to be notified) as a buſineſſe of debt or pecuniary ingagement, let their wiſdome proportion the diſtribution; But if it be in the caſe of ſome ſecret crime, as of theft, or ſodomie, which you would keep as cloſe as your own heart, the reſtitution muſt be charged upon your conſcience to be made with ſo much more impartiality, as you deſire it more to be concealed; Herein have a care of your ſoule, what ever becomes of your eſtate.

As for the time of reſtitution it is eaſily determined, that it cannot

well be too soon for the discharge of your conscience, it may be too late for the occasions of him to whom it is due; Although it may fall out, that it may prove more fit to defer for the good of both: wherein charity and justice must be called in as arbitrators; The owner calls for his money in a riotous humor to misspend it upon his unlawfull pleasure; if your delay may prevent the mischiefe, the forbearance is an act of mercy: The owner calls for a sword deposited with you, which you have cause to suspect he means to make use of, for some ill purpose; your forbearing to restore it is so both charitable and just, that your act of delivery of it may make you accessary to a murther. Whereto I may ad, that in the choice of the time, you may lawfully have some respect to your self; for if the present restitution should be to your utter undoing

which

which may be avoided by some reasonable delay, you have no reason to shun anothers inconvenience by your own inevitable ruine; in such case let the creditor be acquainted with the necessity, his offence deprecated, and rather put your self upon the mercy of a Chancery, than be guilty of your own overthrow.

But when the power is in your hand, and the coast every way cleer, let not another mans goods or mony stick to thy fingers; and think not that your head can long lye easily upon another mans pillow.

Yea, but you say the money or goods mis-carried, either by robbery or false trust, ere you could employ them to any profit at all; This will not excuse you; after they came into your power, you are responsible for them; What compassion this may work in the good nature of the owner for the favour of an abate-

ment, must be left to his own breast; your eye to restitution is not the less; For it is supposed, had they remained in the owners hands they had been safe; if it were not your fault, yet it was your crosse that they miscarried, and who should bear your crosse but your selfe?

Shortly then, after all pretences of excuse, the charge of wise *Solomon* must be obeyed: *With hold not good from the owners thereof, when it is in the power of thine hand to doe it*, Prov. 3. 17.

Case VIII.

Whether, and how far doth a promise extorted by fear, though seconded by an oath, bind my conscience to performance?

A Meer promise is an honest mans strong obligation; but if it be withall

withall backed with an oath, the bond is sacred, and inviolable.

But let me aske you what promise it is that you thus made and bound? If it be of a thing unlawfull to be done, your promise and oath is so far from binding you to performance that it binds you only to repentance that ever you made it; In this case your performance would double and heighten your sin: It was ill to promise, but it would be worse to perform. *Herod* is by oath ingaged for an indefinite favour to *Salome*. She pitches upon *John Baptist's* head. He was sorry for such a choice, yet for his oaths sake he thinks he must make it good. Surely, *Herod* was ill principled, that he could think a rash oath must binde him to murder an innocent. He might have truely said, this was more than he could doe; for that we can doe, which we can lawfully doe.

But if it be a lawfull thing that you have thus promised, and sworn; though the promise were unlawfully drawn from you by fear, I dare not perswade you to violate it. It is true that divers learned Casuists hold, that a promise drawn from a man by fear is void, or at least revokable at pleasure; and so also the oath annexed, which follows the nature of the act whereto it appends; chiefly upon this ground, that both these are done without consent, meer involuntary acts, since nothing can be so contrary to consent as force and fear: But I dare not goe along with them, for that I apprehend there is not an absolute involuntariness in this engagement, but a mixt one, such as the * Philosopher determines in the Mariner, that casts his goods over board to save his life, in it self, he hath no will to doe it, but here

* Arist. Eth. l. 3. c. 1.

and

and now upon this danger imminent, he hath an half-will to perform it.

Secondly, I build upon their own ground; There is the same reason, they say, of force, and of fraud, now that a promise and oath drawn from us by fraud binds strongly, we need no other instance than that of *Joshua* made to the *Gibeonites*; there could not be a greater fraud than lay hid in the old shooes, thred-bare garments, rent bottels, and mouldy provisions of those borderers; who under the pretence of a remote nation put themselves under the interest and protection of *Israel*: *Josh.* 9. 12. 13. &c. the guile soon proved apparent, yet durst not *Joshua*, though he found himself cheated into this covenant, fall off from the league made with them; which when, after many ages, *Saul* out of politique ends went about to have broken, we see how fearfully it was avenged with a grievous

plague of famine upon *Israel*, even in *David's* dayes, 2 Sam. 21. 1. when was no way accessary to the oppression; neither could be otherwise expiated than by the bleeding of *Saul's* bloody house. When once we have interessed God in the businesse, it is dangerous not to be punctuall in the performance. If therefore a bold thief, taking you at an advantage, have set his dagger to your breast, and with big oaths threatned to stab you, unlesse you promise and sweare to give him an hundred pounds to be left on such a day in such a place for him, I see not how (if you be able) you can dispence with the performance; the onely help is, (which is well suggested by * *Lessius*) that nothing hinders why you may not, when you have done, call for it back again as unjustly extorted. And truly, we are beholding to the Jesuits for so much

* Lessius de just. &c. l. 2. c. 42. dub. 6.

of a reall equivocation; why should you not thus right your self, since you have onely tyed your self to a meere payment of the sum? upon making it down for him, you are free. But if he have forc'd you to promise, and sweare not to make him known, you are bound to be silent in this act, concerning your self; but withall, if you finde that your silence may be prejudiciall to the publique good, for that you perceive the licentiousnesse of the offender proceeds (and is like so to doe) to the like mischief unto others, you ought, though not to accuse him for the fact done unto you, yet to give warning to some in authority to have a vigilant eye upon so lewd a person, for the prevention of any further villany.

But if it be in a businesse, whose perill rests onely in your self, the matter being lawfull to be done, your

your promise and oath (though forced from you) must hold you close to performance, notwithstanding the inconveniences that attend. If therefore you are dismissed upon your Parole, for a certain time, to return home, and dispose of your affairs, and then to yeeld your self again prisoner to an enemy, the obligation is so strict and firm, that no private respects may take it off: and it should be a just shame to you, that a * Pagan should out of common honesty hold himself bound to his word, (not without the danger of torment and death) when you that are a Christian slip away from your oath.

* Attilius Regulus.

Case

Case IV.

Whether those moneys or goods which I have found, may be safely taken and kept by me to my own use.

IT is well distinguished by *Soto* out of *Aquinas**, that those things which may be found, are either such as call no man master, as some pearl, or precious stone, or Ambergris lying upon the shore; or such as have an owner, but unknown to us, or (as we may add, to make up the number compleat) such as whose owner we know. Where the true owner is known, speedy restitution must follow; otherwise the detention is in the next dore to theft; Where the commodity found hath no owner, it justly falls to the right of the first finder, for both the place and the thing are masterless, (*adespota*) and common;

* Dam. Sot. de Jure & Justit. l. 5. q. 3. pag. 456.

offering

offering themselves to the next commer: The onely difficulty is in those things which have an unknown owner: And certainly common justice and honesty suggests to us, that we may not seize on commodities of this kinde, as absolutely our own; the casualty of their mis-laying doth not alter their propriety; they are still his that lost them, though out of his sight, yet not out of his right; and even naturall Justice, would give every man his own. The Lawes both Civill and Canon, and Municipall, doe sufficiently guide our practise in many particular cases of this nature, and our Conscience must lead us to follow them: If they be quick commodities, as horses, sheep, kine, and the like, (which we call Waifs and Strayes) every one knowes they are to be publiquely impounded, that upon search the owner may be the surer to finde them, and if

he

he come not in the sooner, to be openly cryed in severall markets, that the noise of his own neglected goods may come to his eare: and if, upon a continuing silence, they be put into the Custody of the Lord of the Manour, (who is most likely to be responsible) and he shall make use of them before his year and day be expired, he shall not do it without some mark of distinction, that yet the true owner may know, that they are not challenged by the present possessor, as his own, but lye open to the just claime of their true master.

But if they be dead commodities, as a jewell, a purse, or some ring of price, or the like, the finder may not presently smother up the propriety of it in his own cofer; his heart tells him that the meere accident of his finding it, cannot alienate the just right of it from the right owner; he is therefore bound in conscience, in an honest

honeſt ſincerity to uſe all good means for the finding out of the right proprietary, whether by ſecret inquiry, or open publication: and if after due inquiſition no claim ſhall be made to it for the preſent, he ſhall reſerve it in his hand in expectation of a juſt chellenge: upon the aſſurance whereof (how late ſoever) he is bound to reſtore it to the proper owner: who, on the other ſide, ſhall fail in his duty of gratitude, if he return not ſome meet acknowledgment of that good office, and fidelity: In all which mutuall carriages, we ought to be guided by thoſe reſpects, which we could wiſh tendred to our ſelves in the like occaſions. Mean while, in all the time of our cuſtody, we are to look upon thoſe commodities as ſtrangers, making account of ſuch a potentiall right onely in them, as we are ready and deſirous to reſign to the hands that purchaſed and loſt them. On

the contrary, no words can expresse the horrible cruelty and injustice that is wont to be done in this kinde, not onely on our shores, but in other nations also, upon the ship-wrecked goods both of strangers and our own compatriots; whiles instead of compassioning and relieving the losse and miseries of our distressed brethren, every man is ready to run upon the spoil, and, as if it were from some plundered enemy, is eagerly busie in carrying away what riches soever come to hand, which they falsly, and injuriously term *Gods Grace*, when as indeed it is no other than the Devils booty. This practise can passe for no other than a meer robbery, so much more hayneous, as the condition of the mis-carried owner is more miserable: what a foul inhumanity is this, to persecute him whom God hath smitten, and upon no other quarrel to be cruel to our brother, than

because

because the Sea hath been merciless? Deare Countrimen, ye especially of the west, leave these abominable pillages to savage Nations, that know not God; and, putting on the bowels of tender compassion, lend your best succor rather for the rescue of poor wrecked souls, and safely preserving that small residue of their drowned fraight, which you cannot imagine that the Sea hath therefore forborn to swallow, that you might.

CASE X.

Whether I may lawfully buy those goods which I shall strongly suspect, or know to be stolen or plundered; or, if I have ignorantly bought such goods, whether I may lawfully (after knowledge of their owner) keep them as mine.

TO buy those goods which you know, or have just cause to suspect

pect to be stolen or plundered, it no better than to make your self accessary to the theft; if you doe it with an intention to possesse them as your own; for what doe you else herein, but *ex-post-facto* partake with that thief, who stole them; and incourage him in his lewd practices? since according to the old word; If there were no receivers, there would be no thieves. Neither will it serve the turn, that in the case of plunder, there may seem a pretence of justice, in that this is pleaded perhaps to be done by some colour of authority; for certainly where there is not law, there can be no justice, where of law is the only rule: Whatever then is against an established law, in matter of right and possession, can be no other than unjust. Take heed therefore lest that heavy challenge of the Almighty be (upon this bargain) charged upon you; Psal. 50. 18. *When thou sawest*

a thief, thou consortest with him: These stoln waters may be sweet in the mouth, but they will be poyson in the maw, and like the water of a just jealousie, rottennesse to the belly: But if (as these ill-gotten goods are lightly cheap penny-worths) you buy them onely with an intention to gratifie the true owner, with an easie purchase of his own, (which would perhaps else be unrecoverable) (whiles your profession, to doe it for no other end, takes off the scandal) I cannot but allow your act, and commend your charity.

But if, making use of that rule which Saint *Paul* gives for meat, in bargaining for any other commodities, you shall extend your liberty to whatsoever is sold in the market, and shall in the exercise of that freedome upon a just and valuable consideration ignorantly buy those goods which you afterward hear, and know, to be

be anothers, the contract is on your part valid, and faultleſſe, ſince your invincible want of knowledg acquits you from any guilt of conſent; but withall, there is an after-game to be plaid by you: you are bound (upon juſt notice) to acquaint the true owner with the matter, and to profer your ſelf ready to joyne with him in the proſecution of law, or juſtice upon the offender, and upon a meet ſatisfaction to tender him his own.

But if the theft be only upon probability; and it be doubtfull whether the goods belong to the owner notified to you, your duty is to make diligent inquiry into the buſineſſe; and if upon due inquiſition, you finde too much likelihood of the theft, I dare not adviſe you (with ſome Caſuiſts) to reverſe the bargain, and to return the commodity to thoſe falſe hands that purloined it; but rather to call the probable owner, and with him

him to appeale unto just authority; for a more full examination of the right, and an award answerable to justice: but if there appear no good grounds for an impeachment, you may peaceably sit down in the possession, till further evidence may convince your judgement in the contrary.

RE-

RESOLUTIONS.

The second Decade.

Cases of Life and Liberty.

CASE I.

Whether, and in what cases it may be lawfull for a man to take away the life of another.

How light a matter soever it may seeme to the world now long soaked in blood, a mans life is most precious; and may not (but upon the weightiest of all causes) be either taken, or given away. The great God hath

hath reserved to himself this prerogative, to be the onely absolute lord of it; neither can any creature have power to command it, but those only to whom he hath committed it by special deputation, nor they neither, by any independent or illimited authority, but according as it is regulated by just laws: to call for a mans life meerly out of will, is no other than a Turkish tiranny.

Now the same God that hath ordained Soveraign powers to judge of, and protect the life of others, hath given weighty charge to every man to tender and mannage his own; which binds him to use all just means for his own preservation, although it should be the necessitated destruction of another.

Let us see therefore how far, and in what cases, man, that is always appointed to be master of his own life, may be also master of another mans.

That

That publique Justice may take away the life of haynous malefactors, is sufficiently known, to be not lawfull only, but required; and indeed so necessary, that without it there were no living at all amongst men.

That in a just war the life of an open enemy may be taken away, is no lesse evident; the only question is of private men in their own cases.

And here we need not doubt to say that even a private man, being mortally assaulted, may in his own defence lawfully kill another, I suppose the assault mortall, when both the weapon is deadly, and the fury of the assailant threatens death, as for some sleight and suddain passages of a switch, or a cane, they come not under this consideration, although those small affronts offered to eminent persons prove oftentimes to be quarrels no lesse than mortall. But

even in these assaults, (except the violence be so too impetuous, that it will admit of neither part nor parle) there ought to be (so much as may consist with our necessary safety) a tender regard and endeavour to avoid the spilling of blood; but if neither perswasion, nor the shifting (what we may) our station, can abate any thing of the rage of the assaulter, death must. Yea, if not my brother onely, but my father, or my sonne should in this forcible manner set upon me, however I should hazard the Award of some blowes, and with tears beg a forbearance, yet, if there would be no remedy, nature must pardon me, no man can be so mean as my self.

I cannot therefore subscribe to the counsell of * *Emanuel Lesius* (abetting some ancient Casuists, and pre-

* Lef. de jur. lib. 2. c. 9. dub. 8. Et Angelus & Sylvester, &c.

tended

tended to be countenanced by some Fathers) that it were meet for Clericall and religious persons rather to suffer death, than to kill a murtherer: since no reason can be shewed, why their life should not be as deare to them as others, or why they should be exempted from the common-law of nature, or why their sacred hands should be more stained with the foul blood of a wicked man-slayer, justly shed, than any others. I am sure *Phinees* thought not so, nor *Samuel* after him, and (which is most of all) that the honor and priviledges of the Sons of *Levi* were both procured, and feoffed on them upon an injoyned blood-shed.

*Onely there is the favour and mercy of that learned Casuist, that Clerks and Votaries are not alwayes bound rather to dye, than kill: for saith he, if such religious persons should be think

*Ibid. paragr. xlv.

himself, that he is in a deadly sin, and should thereupon feare that he should be damned, if he were killed in that wofull and desperate estate; he were then bound by all means to defend himself, and to preferre the safety of his own soule, before the life of another. As if nothing but the fear of damnation could warrant a man for his own safegard, as if nothing but the danger of hell could authorize an holy person to be his own guardian; as if the best of lives were so cheap and worthlesse, that they might be given away for nothing, whereas contrarily *Precious is the sight of the Lord is the death of all his Saints*, Psalm. 116. But in such a case (according to the opinion of this great * Casuist) charity to our selves doth not more arme and enforce our hand, than charity to our neigbour holds it, and binds it up: We may

* Lessius ibid.

not

not kill, lest the man slayer, dying in the attempt of this murther, should everlastingly perish: Surely, I cannot but admire this unreasonable mercy in a father of the Society; Where was this consideration when so many thousands of innocent persons were doomed to be blown up in a state of impenitence; whose unrepented decease must needs have sent them up instantly to their hell?

By this reason a malefactor, if he be obdured in his sin, and professeth to be remorseless, may not feel the stroke of Justice. Shortly then, if a man will needs be wicked to my destruction, the evill is his own, let him bear his own guilt, let me look to my own indemnity.

The case is yet more difficult where the attempt is not upon my person, but my goods; if a man will be offering to rob my house, or to take my purse, what may I doe in this

case? Surely, neither charity, nor justice can dissuade me from resisting; the laws of God and man will allow me to defend my own; and if in this resistance the Thief, or Burglayer miscarry his blood will be upon his own head: although in the mean time, charity forbids that this slaughter should be first in my intention; which is primarily bent upon my own safety, and the vindication of my own just propriety: the blood that followes is but the unwilling attendant of my defence: of the shedding whereof, God is so tender, that he ordained it only to be in the lively done in a nightly robbery; *Exodus* 22. 2. where the purpose of the Theif is likely to be more murtherous, and the act more uncapable of restitution.

What then if the Thief, after his robbery done, ceasing any further danger of violence, shall betake himself

sell to his heeles, and run away with my money: In such a case, if the summe be so considerable, as that it much imports my estate, how ever our municipial lawes may censure it (with which, of old, even as killing (* *se defendendo*) was no lesse than felony of death) my Conscience should not strike me if I pursue him with all might, and in hot chase so strike him, as that by this means I disable him from a further escape, for the recovery of my own; and if hereupon his death shall follow, however I should passe with men, God and my own heart would acquit me.

Neither doubt I to say the like may be dode upon a forcible attempt of the violation of the Chastity of either sex: A case long agoe adjudged by the doom of nature it self in *Marius* the General of the Roman

* Dalton, p. 144.

army (as [a] *Cicero* tells us) cleerly acquitting a young man for killing a Colonel that would have forced him in this kind.

But I may not assent to † *Dominicus Bannez*, *Petrus Navarrus*, and *Cajetan*, (though grave Authors) who hold, that if a man goe about upon false and deadly crimmations to subborn witnesses against me, to accuse me to a corrupted Judge, with a purpose to take away my life, in a color of Justice, if I have no other way to avoid the malice, I may lawfully kill him: It were a wofull and dangerous case, if every man might be allowed to carve himself of Justice; Meer accusations are no convictions; How know I what God may work for me on the Bench, or at the Barre? what evidence he may raise to cleer me? what confusion, or contradiction he

[a] O ac pro Mil. † Bann q 64 a 7 dub 9. Nav. l. 2. c 3 Less l. 2. de Jure, & c. 9. dub. 8.

may

may cause in the mouths of the hired witnesses? what change he may work in the Judge; what interposition of higher powers? There is a providence in this case to be relyed upon; which can and will bring about his own holy purposes, without our presumptuous, and unwarrantable undertakings.

CASE II.

Whether may I lawfully make use of a Duell for the deciding of my right, or the vindication of my honour?

I Have long agoe spent my opinion upon this point, in a large epistolar discourse, which I find no reason to alter: thither I might referre you to spare my labour; but lest perhaps that should not be at hand, shortly thus:

The sword in a private hand was

never ordained to be a decider of any controversies, save this one, whether of the two is the better Pencer; nor yet that always, since Eccles. 9. 11. *The race is not to the swift, nor the battle to the strong*, as *Solomon* hath observed: It can be no better therefore, than a meer tempting of God, as * *Rodriguez* justly censures it, to put our selves, or our cause upon so unwarrantable a trial: I find but two practises of it in the Records of Scripture, the one, that famous challenge of *Goliah*, which that proud *Philistine* had not made, if he had not presumed of his Giantly strength, and stature, so utterly unmatchable by all *Israel*, 1 *Sam.* 17. 24. that the whole host was ready to give back upon his appearance; he knew the advantage so palpable, that none would dare to undertake the quarrel, and had still gone on to triumph over that trem-

* Rodrig. Sum. cas. Tom. 1. cap 73.

blin

bling army, had not Gods inexpected champion, by divine instinct taken up the monster, and vanquisht him, leaving all but his head, to bedding that earth which had lately shaken at his terror.

The other was in that mortal quarrel betwixt *Joab* and *Abner*, on the behalf of their two Masters, *David* and *Ishbosheth*; 2 *Sam.* 2. 14. wherein *Abner* invites his rival in honor, to a Tragical play, (as he terms it) a monomachie of twelve single combatants on either part, which was so acted, that no man went victor away from that bloody Theater; Only it is observable, that in both these conflicts still the challengers had the worst.

In imitation of which latter, I cannot allow that which I find frequently done in the managing of publique hostility; that some confident Cavalier out of meer bravery of spirit

crave

craves leave to put himself forth before both Armies, and (as in way of preface to an enſuing battaile) bids defiance to any Antagoniſt; An act of more valor than judgment, wherein the undertaking is void of warrant, and the iſſue (lightly) of ſucceſſe: whiles it pleaſeth God commonly to puniſh preſumption with a foile, and the ominous diſcouragement of one, proves a faſt diſcouragement to many.

And if ſingle fortitude be not triable this way, much leſſe juſtice in cauſes litigious; to make the ſword arbiter of ſuch differences, were no better than to revive the old Ordalain triall uſed by our Heathen Anceſtors: Sith God hath no more ordained, nor promiſed to bleſſe the one than the other. And reaſon it ſelf tells us, in how ill a condition that righteous cauſe is, which muſt be carried by the ſhorter weapon,

poon, the stronger arme, the skilfuller fencer.

Now whereas there are two acts, as introductions in to the field, a Challenge, and an Acceptation, both of them have their guilt, but the former so much more, as it hath in it more provocation to evill.

I cannot therefore but wonder at, and cry down the opinion of *Bonacz.*, and *Cajetan*, that a man slandered by an unjust accusar, may justly challenge him the field, and vindicate himself by the sword, A Doctrine, which if it were allowed and accordingly practised, besides that it would destroy the course of justice, and rest revenge out of the hands of the Almighty, were enough to make the world an *Aceldama*. For who would not be his own Judge for the Accusation, and his own executioner for the revenge?

There may yet seeme more inno-

cence

cence in the Acceptation, which makes a shew of a meer passive nature, and appears to be exhorted by the insolence of a provoking adversary, whose pressures are wont to receive such construction, as that the challenged party refusing, upon what ground soever, is in the vulgar opinion proclaimed for base and recreant, and I must needs confesse, the irritation diminisheth the offence, but withall, however the Spanish and Italian Casuists (whose Nations are wont to stand a little too highly upon the points of a mis-called honor) are wont to passe fair interpretations of the matter, I cannot but find it deeply guilty also, for what is this other, than a consent to sin by engaging in blood, which by a man wise and conscionable might be turned off with a just contempt, without imputation of cowardise: since the plea of conscience is able to bear down

the

the vain fancies of idle sword-men: or, if that will not be taken, the false blurres that are cast upon a worthy mans reputation by vulgar breath, deserve no entertainment but scorn; or lastly, other means lie open to both parts for the proof of a questioned valour, which in a lawful way she challenged is ready to imbrace; he walks not unprovided about the businesse of his calling, if he be fairly set upon, on equal terms, he shall make no doubt to defend himself: But to make a formal businesse of a quarrel, on either part, and to agree upon a bargain of blood-shedding, is wicked and damnable, and though both should come fairly off, yet the very intention to kill, is murder.

This case is so clear, that the Councel of * *Trent* hath thought fit to denounce heavy sentences, and in-

* Conc. Tr. Sess. 25. Rodriguez. Tom. 1. c. 73. de duello.

flict

ſtrict ſharp cenſures upon Emperors Kings, States, and Potentates, that ſhall give allowance to Duels within their Dominions, pronouncing them *ipſo jure* excommunicate, and depriving them of thoſe Towns, Cities, Lands, (if held of the Church) where ſuch unlawfull acts are made: And that thoſe who either act, or patronize, and by their preſence aſſiſt, countenance, or abet ſuch combats, ſhall incurre the ſentence of excommunication, the loſſe of all their goods and perpetual infamy, and if they dye in ſuch quarrel, ſhall, as ſelf-murtherers, be debarred the priviledge of Chriſtian burial.

Briefly therefore, neither your Juſtice, nor your Honour may depend upon the point of private ſwords, and if there can be no other remedy, you muſt rather ſuffer in either, than hazard your ſoul.

CASE

Case III.

Whether may it be lawfull, in case of extremity, to procure the abortion of the child, for the preservation of the mother?

I Fear want of true judgement renders too many of the weaker sex grossely culpable in matter of willing abortion; whiles being not well principled either in nature, or grace, they think it not unlawfull, or at least, venially so, whether out of the fear of painfull child-birth, or for the avoidance of too great a charge, to prevent the fulnesse of their conceptions; and therefore, either by over vehement motion, or unwholsome medicine, are not unwilling to forestall nature, and to free themselves early of that which might in time prove their burden: Wherein they little know how highly they

they offend the Majesty of God in destroying his potential creature, and how heavy weight of guilt they lay upon their souls, whiles they indeavour to give an undue ease to their bodies.

Your question supposes an extremity; and surely such it had need to be, that may warrant the intention of such an event.

For the deciding whereof, our Casuists are wont to distinguish double; both of the state of the conception, and of the nature of the receipt. In the former, they consider of the Conception, either as it is before it receive life, or after that it is animated. Before it receive life, they are wont to determine, that howsoever it were no lesse then a mortal sin, in a Physician to prescribe a medicinal receipt to cause abortion, for the hiding of a sinne, or any outward secular occasion; yet for the preservation

tion of the life of the mother, in an extreme danger, (I say, before animation) it might be lawfull: But after life once received, it were an hainous sin so administer any such mortal remedy. The latter Casuists are better advised, and justly hold that to give any such expelling or destructive medicine, with a direct intention to work an abortment, (whether before or after animation) is utterly unlawfull, and highly sinfull: And with them I cannot but concur in opinion; For, after conception we know that naturally followes animation, there is only the time that makes the difference; which in this case is not so considerable, as to take off a sinne. That of * *Tertullian* comes home to the point which both *Cyprianus* and † *Lessius* urge to this purpose: *Homicidii festinatio est prohibere natos*; It is but an hastening of mur-

* Tertul. in Apol. c. 9. † Less. l. 2. c. 9. du. 10.

der

der to hinder that which would be born; *Homo est qui futurus est*; It is a man that would be so, &c.

Upon this ground we know that in a further degree of remotenesse, a voluntary self pollution hath ever been held to have so much guilt in it, as that *Angelus Politianus* reports it as the high praise of * *Michael Verinus*, that he would rather dye, than yeeld to it: how much more when there is a further progresse made towards the perfection of humane life?

And if you tell me that the life of the mother might thus be preserved, whereas otherwise both she and all the possibilities of further conceptions are utterly lost, I must answer you with that sure and universal rule of the Apostle, That *we may not do evill that good may come thereon*, Rom. 3. 8.

* *Ne se pollueret, mavit ipse mori.* Ex Politiano Gerard. Voss. de orig. & progres. Idol. l. 3. c. 18.

The

The second consideration is of the nature of the receit, and the intention of the prescriber. There are prescripts that may, in, and of themselves tend towards cure, and may have ordinarily such an effect, but yet being used and applied for the mothers remedy, may prove the losse of the conception, being yet inanimate, these if they be given with no other intention than the preservation of the mothers life, may be capable of excuse; for that the inconvenience (or mischief rather) which followed upon the receits was accidentall, and utterly against the minde, and hopes of him that advised them.

But if the conception be once formed, and animated, the question will be so much more difficult, as the proceedings of nature are more forward: Whereupon it is, that the Septuagint in their Translation (as *Lessius* well observes) have rendered that

that Mosaicall law (in *Exod* 21.) concerning abortions, in these terms. *If a man strike a woman that is with child, and she make an abortion, if the child were formed, he shall give his life for the life of the child; if it were not formed he shall be punished with a pecuniary mulct to her husband* *; applying that to the issue, which the Vulgar Latin understands of the mother; and making the supposition to be of a formation and life; which the Latine more agreeably to the Originall, makes to be *Death*; and our English, with † *Castalion* expresses by *Mischief*: but whether the Mischief be meant of the death of the mother, or of the late-living issue, the Scripture hath not declared: * *Cornelius à Lapide* taking it expressly of the mothers

* Exod 21. 22. The Septuagint seem to have taken מות (death) for מותרת a diminutive of מת a man; as *Cornel. à Lapid.* probably guessing † Castal. *Si permittas non fuerit*; Ours if no mischief follow. * Cornel. à Lap. in Exod. 21.

Death

death, yet draws the judgement out, in an equall length to the death of the child, once animated; making no difference of the guilt; since the infants soul is of no lesse worth, than hers that bears him.

In this case of the conception animated, I find the Casuists much divided; Whiles some more tender than their fellowes, will not allow in the utmost extremity of a dying mother, a medicine that may be directly curative to be given her, if it should be with any apparent danger of the child; in case that the child may be probably drawn forth alive; which they doe upon this false and bloodily uncharitable ground, * that the child dying without Baptism, is liable to eternall damnation, which wofull danger therefore the mother ought

* Vel. ut alii; *Quorum animæ certissimè in limbum descendunt sine Baptismo.* Mart. Alphons. Viv. Explan. Bulle de abort.

to prevent, though with the certaine hazard of her own life: but the foundation of this judgement being unsound, since to doome the children of believing Parents inevitably to hell for the want of that, which they are not possibly capable to receive, is too cruell and horrible) the structure must needs totter. These men whiles they professe themselves too carefull of the soule of the child (which yet may perhaps be safer than their own) seeme to be somewhat too hard-hearted to the body of the mother.

*Others more probably hold, that if the case be utterly desperate, and it be certain that both mother and child must undoubtedly perish if some speedy remedy be not had; it may then be lawfull to make use of such receits as may possibly give some hopes to save the mother,

*Rodr. Sum. To. 2 c. 5. de Abort.

though

though not without some peril of the child.

But all this while, the intentions, and indeavours must be no other than preservatory; however it pleaseth God to order the events: Surely, no man that purposely procureth an abortion, as such, can wash his hands from blood; No woman that wilfully acts, or suffers it, (however the secrecy may exempt her from the danger of humane lawes) can thinke to avoid those judgments of the righteous God, which he hath charged upon murderers.

I cannot here therefore forbear to give the world notice of the impious indulgence of a late Pope in this kind, *Sixtus quintus*, who in our time sat in the See of *Rome*, finding the horrible effects of that liberty, which too many both secular and religious persons took to themselves in this matter of abortion; in a just detestation of that

damnable practice, thought meet in much fervour of spirit to set forth his *Bulla Cruciata*, than which there was never a more zealous peice published to the world; wherein that Pope pronounces all those, which have any hand in the acting or procuring of this wicked fact, of the ejecting of conceptions, whether animate or inanimate, formed or informed, by potions, or medicaments, or any other means whatsoever, to have incurred both the crime and punishment of manslaughter; charging due execution to be done upon such persons accordingly: And withall in a direful manner excommunicates them, and sends them to hell, (without repentance) reserving the absolution solely to himself and his successors.

Now comes a late * successor of his, *Gregory* 14. who finding the

* Vid. Rodrig. ubi supra.

sentence

sentence too unreasonably hard for his petulant, and thrifty Italians, and indeed, for all loose persons of both sexes; mitigates the matter; and, as a Spanish Casuist expresses it truly, in the very first yeare of his Pontificate in a certain Constitution of his, dated at *Rome*, the last day of *May*, 1591. *Delevit censuras, quas*, Sixtus V. *imposuerunt contra facientes, procurantes, &c.* abolisht and took off those heavy censures, which * *Sixtus* had imposed; and reduced the terrible punishments by him ordained to be inflicted unto a poor bare irregularity; and determins, that any Confessor, allowed by the Ordinary, may absolve from this sin of procured abortion: By the sleightnesse of the censure, in effect, animating the sin: An act well becomming

* Constit. Greg. 14 *Quæ dicit quod quivis confessor approbatus ab Ordinario potest absolvere à peccato abortus.* Ibid.

the mother of Fornications. After all which Pandarisme, let all good Christians know, and resolve the crime to be no lesse than damnable.

But withall, let me advise you, (with * *Marti nus Vivaldus*) that what I have her einwritten against the procurers of abortions, may not be extended to the practise of those discreet Physicians, and Chirurgeans, who being called to for their aid in difficult and hopelesse child-births, prescribe to the woman in travaile such receits, as may be like to hasten her delivery, (whether the child be alive or dead:) forasmuch as the conception is now at the full maturity; and the indeavour of these Artists is not to force an abortement, but to bring forward a naturall birth, to the preservation of the mother, or the child, or both.

* Mart. Alphons. Vivald. expli. Bull. Cruc.

Case IV.

Whether a man adjudged to perpetual imprisonment, or death, may in conscience indeavour, and practise an escape.

WHat the Civil or Common Lawes have in this case determined for the publique good, comes not within the compass of our disquisition: Let the Guardians, and Ministers of those Lawes look carefully to the just execution of them accordingly: The question is onely of the law of private conscience, how far that will allow a man to goe in case of a sentence passed upon him, whether of death or bonds.

And first of all, if such sentence be unjustly passed upon an innocent, no man can doubt, but that he may most lawfully, by all just means, work his own freedome: But if

an offendor, what may he doe? The common opinion of Casuists is peremptory; * That he that is kept in prison for any offence whereupon may follow death, or losse of limb, whether the crime be publique or private, may lawfully flee from his imprisonment, and may for that purpose use those helps of filing, or mining, which conduce to this purpose. Their ground is, that universal rule, and instinct of self-preservation, which is natural to every creature; much more eminent in man, who is furnished with better faculties than the rest, for the working of his own indemnity: Whereto is added that main consideration of *Aquinas*, That no man is bound to kill himself, but onely doomed to suffer death; not therefore bound to doe that upon which death will inevitably follow, which

* *Qui retinetur in carcere propter aliquod delictum, &c.* Rodig. Sum. cap. 401.

is

is to wait in priſon for the ſtroak, if he may avoid it; it is enough that he patiently ſubmits to what the law forces upon him, though he doe not cooperate to his own deſtruction: his ſentence abridges him of power, not of will to depart: Whereupon they have gone ſo far, as to hold it in point of conſcience not unlawfull for the friends of the impriſoned, to conveigh unto him files, and cords, or other inſtruments uſefull for their eſcape: But herein ſome better adviſed Doctors have juſtly diſſented from them; as thoſe, whoſe Judgement hath not been more favourable to malefactors, than dangerous and prejudicial to the Common-wealth: for how fafe ſoever this might ſeem in lighter treſpaſſes, yet if this might be allowed, as in conſcience lawfull to be done to the reſcue of murtherers, traytors, or ſuch other flagitious villains, what inſuaire miſchief might

is produced? and what were this other than to invite men to be accessary to those crimes which the law in a due way intends to punish? Certainly, by how much a more laudable act of Justice it is, to free the society of men from such wicked miscreants, by so much more sinfull and odious an office it were, to use these sinister means for their exemption from the due course of Justice; But howsoever for another man to yeeld such unlawful aide, is no better than a foul affront of publique Justice, and enwraps the agent in a partnership of crime; yet the law of nature puts this liberty upon the restrained party himself, both to wish and indeavour his own deliverance: Although not so, but that if the prisoner have ingaged himself by solemne promise, and oath to his keeper, not to depart out of his custody; honesty must prevaile aboye nature; and he ought rather to

to dye, than violate that bond which is stronger than his irons. Very Heathens have by their example taught us this lesson, to regard our fidelity more than our life. Thus it should be, and is, with those that are truly Christian and ingenuous, under what ever capacity, but in the case of graceless and felonious persons, Goalers have reason to look to their bolts and locks, knowing (according to the old rule of wise *Thales*) that he who hath not stuck at one villany, will easily swallow another, perjury will easily down with him, that hath made no bones of murther.

But where the case is entire, no man can blame a captive if he would be free, and if he may untie the knot of a cord wherewith he was bound, why may he not untwist, or grate an iron wherewith he is fettered? for so much as he is not bound to yeeld,

or continue a consent to his own durance: This charge lies upon the keeper, not the prisoner.

A man that is condemned to perish by famine, yet if he can come by sustenance may receive, and eat it: That Athenian malefactor, in * *Valerius Maximus*, sentenced to die by hunger, was never found fault with that he maintained himself in his dungeon by the breasts of his good natur'd daughter.

And if a man be condemned to be devoured by a Lion, there can be no reason why he should not (what he may) resist that furious beast, and save his own life.

But when I see our Romish Casuists so zealously tender in the case of Religious persons, as that they will not allow them, upon a just imprisonment, to stirre out of those grates, whereto they are confined, by

* Val. Max. l. 5. Dom. Sot. de Jure, &c. l. 5. q. 5.

the

the doom of their Prelates, And when I see the brave resolutions of holy Martyrs, that even when the dores were set open, would not flee from a threatned death, I cannot but conclude, that whatsoever nature suggests to a man, to work for his own life or liberty, when it is forfeited to Justice, yet that it is meet and commendable in a true penitent, when he findes the doom of death or perpetual durance justly passed upon him, humbly to submit to the sentence; and not entertain the motions and means of a projected evasion: but meekly to stoop unto lawfull authority, and to wait upon the issue whether of Justice, or Mercy: and at the worst, to say with the Poet, *Merui, nec deprecor.*

CASE

Case V.

Whether and how far a man may be urged to an Oath.

AN Oath, as it is a sacred thing, so it must be no otherwise than holily used; whether on the part of the giver, or taker, and therefore may neither be rashly uttered, nor unduly tendered upon sleight, or unwarrantable occasions: We have not to doe here with a promissory oath, the obligation whereof is for another inquisition; It is the assertory oath that is now under our hand, which the great God by whom we swear, hath ordained to be an end of controversies, *At the mouth of two or three witnesses shall the matter be established, Deuter.* 19.15. and 17.6. As for secular Titles of *mine*, or *thine*, the propriety of goods, or lands, next after written evidences, testimonies upon Oath must

must needs be held most fitly decisive the onely scruples are wont to be made in causes criminal.

1. Wherein surely we may lay this undoubted ground, that no man is to be proceeded against without an accuser, and that accusation must be made good by lawfull witnesses: A Judge may not cast any man upon the plea of his own eye-sight: should this liberty be granted, Innocence might suffer, and Malice triumph: Neither may any man be condemned upon hear-say, which how commonly false it is, daily experience sufficiently evinceth.

On the other side, men are apt enough to connive at each others wickednesse, and every man is loath to be an Informer, whether out of the envy of the office, or out of the conscience of his own obnoxiousnesse.

And yet thirdly, it is requisite that care should be taken, and all due means

means used by authority, that the world may not be over-run with wickednesse; but that vice may be found out, repressed, punished.

There cannot, fourthly, be devised a fairer, and more probable course for the effecting hereof, than by the discovery upon oaths of the Officers and Jurors in Assizes, and Sessions; and of Churchwarden, and Sidemen in Visitations.

The ground of all presentments to, or by these men must be either their own knowledge, or publique fame, or an avowed information. Any of these gives a lawfull hint to the Judge, whether Ecclesiastical or Civil, to take full trial of the cause and person.

Knowledge is alwayes certain, but fame is often a lyar; and therefore every idle rumor must not be straight taken upon trust, the inconvenience and injury whereof I have often seen;

seen; when some malicious persons, desiring to doe a despight to an innocent Neighbour, raises a causelesse slander against him, whispers it to some dis-affected Gossips, this flies to the eare of an Apparitor; he straight runs to the Office, and suggests a publique fame; the honest man is called into the Court; his reputation is blurred in being but summoned; and after all his trouble and disgrace hath his amends in his own hands.

The rule of some Casuists, that ten tongues make a fame, is groundlesse and insufficient; neither is the number so much to be regarded as the quality of the persons.

If a whole pack of debauched companions shall conspire to stain the good name of an innocent (as we have too often known) it were a shamefull injustice to allow them the Authors of a fame: the more judici-

ous

ous Doctors have defined a publique fame by the voice of the greater part of that Community, wherein it is ſpread, whether Town, Parish, City, and therein of thoſe that are diſcreet, honeſt, well-behaved. We are wont to ſay, Where there is much ſmoak, there is likely ſome fire: an univerſal report from ſuch mouthes therefore, may well give occaſion to a further inquiry. If any mans zeal againſt vice will make it a matter of inſtance, the cale is cleer, and the proceeding unqueſtionable; But if it be matter of meer office, the carriage of the proceſſe may be liable to doubt; Herein it is meet ſuch courſe be taken, as that neither a notorious evill may be ſmothered, nor yet innocence injured: To which purpoſe the moſt confident reporter may be called upon (becauſe fame hath too many tongues to ſpeak at once) to lay forth the grounds of that his whiſpered crimination; and

if

if the Circumstances appear pregnant, and the Suspicions strong, I see not why the Ecclesiastical Judg (for with him onely in this case I professe to meddle) may not convent the person accused, lay before him the crime which is secretly charged upon him; and either upon his ingenuous confession, injoyn him such satisfaction to the scandalized Congregation as may be most fit, or upon his denyal urge him to cleer himself by lawful witnesses, of the crime objected; Or why he may not, if he see further cause, appoint a discreet and able prosecutor to follow the businesse in a legal way; upon whom the accused, if he be found guiltlesse, may right himself.

But all this while, I finde no just place for an oath to be administred to a man for his own accusation; which certainly, is altogether both illegal and unreasonable; If a man will

will voluntarily offer to cleer himself by an Oath, out of the assurednesse of his own innocence, he may be allowed to be heard, but this may neither be pressed to be done, nor yet conclusive, when it is done; for both every man is apt to be partial in his own case, and he that durst act a foul sin will dare to lack it. It was ever therefore lawfull (even when Ecclesiastical Inquisitions were at the highest) for a man to refuse answer to such questions upon oath, or otherwise, which tended to his own impeachment, as unjustly, and unwarrantably propoled: and it was but a young determination of * *Aquinas*, when he was onely a Batchelor, in the General Chapter at *Paris*, contradicted by all the ancient Graduates there, that when the crime is notorious, and the author unknown, the

* Silvestr. V. Corneß. Dom. Sot. l. 5. de Just. q. 4. Less. de Jud. c. l. 2. c. 29.

secret

secret offendor is bound upon his Ordinaries charge and command, to reveal himself.

Even the Spanish Casuists, the great favourers and abettors of the Inquisition, teach that the Judg may not of himself begin an inquiry, but must be led by something which may open a way to his search, and as it were force him to his proceeding, *ex officio*, as publique notice, infamie, common suspicion, complaint, otherwise, the whole proceese is void in law; although herein some of them goe too far in favor of their great *Diana*, that where the crime is known, and the author unknown, the Judge may in a generality inquire of him that did it, and if he have any private information (though without any publique fame foregoing) he may in some cases raise a particular inquisition upon the party, and call him to defend himself; which course certainly,

certainly, gives too much advantage to private malice; and opens too much way to the wronging of Innocence. The fair way of proceedings in all Christian Judicatures, should be, by Accuser Witnesse, and Judge, in distinct persons openly known; the Accuser complains, the Witnesse evinceth, the Judge sentences: The one may not be the other, much lesse all three: Were that to be allowed, who could be innocent?

When a witnesse then is called before a competent Judge, to give evidence upon oath concerning a third person, in a matter cognoscible by that Jurisdiction, he is bound to *sweare in truth, in judgement, and in righteousnesse*, Jer. 4. 2. as for his own concernments, he must refer himself to the testimonies and oathes of others.

CASE

Case VI.

Whether a Judge may upon allegations, proofs, and evidences of others, condemn a man to death, whom he himself certainly knows to be innocent.

THe question hath undergone much agitation. The stream of all ancient Divines, and Casuists runs upon the affirmitive; their ground is, that the Judge, as he is a publique person, so in the seat of Judicature, he must exercise a publique authority; and therefore waving his private knowledge and interest, must sentence according to the allegations and proofs brought before him; since he is a Judge of the cause, not of the law; whereof he is to be the servant, not the master: There he sits not to speake his own judgement, but to be the mouth of the law, and the law commands him to judge

judge according to the evidence; the evidence therefore being cleare and convictive, the doom can be no other than condemnatory.

For my part, I can more marvell at their judgement herein, than approve it; professing for the negative, with some fewer and latter Authors, upon these sure grounds.

It is an evident and undeniable law of God which must be the rule of all Judges; *The innocent and the righteous slay thou not, Exod.* 23. 7. This is a Law neither to be avoided nor dispensed with: Accusations and false witnesses cannot make a man other than innocent; they may make him to seeme so, insomuch that those that know not the cause exactly, may perhaps be mis-led to condemn him in their judgements: But to the Judge, whose eys were witnesses of the parties innocence, all the evidence in the world cannot make him other than guilt-

guiltlesse; so as that Judge shall be guilty of blood, in slaying the innocent, and righteous.

Secondly, the Law of judging according to allegations and proofs is a good generall direction in the common course of proceedings, but there are cases wherein this law must vail to an higher, which is the law of Conscience: Woe be to that man who shall ty himself so close to the letter of the law, as to make shipwrack of conscience; And that bird in his bosome will tell him, that if upon whatever pretences, he shall willingly condemn an innocent, he is no better than a murtherer.

Thirdly, it is not the bare letter of the law that wise men should stand upon, but the drift and intention of the law, of that, we may in some sense say as the Apostle did of an higher law, *The letter killeth*. Now every reasonable man knows that the intention

intention of the law, is to save and protect the Innocent, to punish onely the guilty: The Judge therefore shall be a perverter of law, if, contrary to his knowledg, he shall follow the letter against the intention, in condemning an Innocent.

Let no man now tell me, that it is the law that condemns the man, and not the Judge; This excuse will not serve before the Tribunall of heaven; The law hath no tongue; It is the Judge that is *lex loquens*; If he then shall pronounce that sentence which his own heart tells him is unjust and cruell, what is he but an officious minister of injustice? But indeed, what law ever said, Thou shalt kil that man whom thou knowest innocent, if false witnesse will swear him guilty? This is but a false glosse set upon a true text, to countenance a man in being an instrument of evill.

What then is in this case to be done?

done? Surely, as I durst not acquit that Judge, who under what ever colour of law should cast away a known innocent, so I durst not advise against plain evidences and flat dispositions, upon private knowledge, that man to be openly pronounced guiltlesse, and thereby discharged; for as the one is a grosse violation of justice, so were the other a publique affronce to the law, and of dangerous consequence to the weal-publique: Certainly, it could not but be extremely unfafe, that such a gap should be opened to the liberty of judgement, that a private breft should be opposed (with an apparent prevalence) against publique convictions: our Casuists have beaten their brains to finde out some such evasions as might save the innocent from death, and the Judge from blood-guiltinesse: Herein therefore they advise the Judge to use some secret means to stop the accusation,

or indictment; (a course that might be as prejudiciall to justice, as a false sentence) to sift the witnesses apart, as in *Susanna*'s case, and by many subtile interrogations of the circumstances to finde their variance or contradiction. If that prevail not, *Cajetan* goes so far, as to determine it meet (which how it might stand with their law, he knows, that with ours it would not) that the Judge should before all the people give his oath, that he knows the party guiltlesse; as whom he saw himself at that very houre at a place far distant from that wherein the fact is pretended to be done. Yea, * *Dominicus à Soto* could be content (if it might be done without scandall) that the prisoner might secretly be suffered to slip out of the gaol, and save himself by flight. Others think it the best way, that the Judge should put off the cause to a su-

* Dom à Sot. de Just. &c. l. 5. q. 4.

perior

periour Bench; and that himself should (laying aside his scarlet) come to the Bar, and as a witness avow upon oath the innocence of the party, and the falsity of the accusation: Or lastly, if he should out of mallice, or some other sinister ends (as of the forfeiture of some rich estate) be pressed by higher powers to pass the sentence on his own Bench, that he ought to lay down his Commission, and to abdicate that power he hath, rather than to suffer it forced to a willing injustice.

And truly were the case mine, after all fair and lawfull indeavours to justifie the innocent and to avoid the sentence, I should most willingly yeild to this last resolution: Yea, rather my self to undergoe the sentence of death, than to pronounce it on the known guiltlesse; hateing the poor pusillanimity of *Dominicus à*

Soto *, that passes a *nimis creditu rigidum*, upon so just a determination, and is so weakly tender of the Judge's indemnity, that he will by no means hear of his wilfull deserting of his office on so capital an occasion.

In the main cause of life and death, I cannot but allow and commend the judgement of *Leonardus Lessius*; but when the question is of matters civil or lesse criminal, † I cannot but wonder at his flying off; in these wherein the businesse is but pecuniary, or banishment, or losse of an office, he holds it lawfull for the Judge, (after he hath used all means to discover the falsnesse of the proofs, and to hinder the proceedings, if thus he prevails not) to passe sentence upon those allegations and probations, which himself knows to be unjust.

* *Etenim quod homo qui officio suo vivit debeat tantam jacturam facere, durum creditu est* D. m. Sot. ubi supra. † In causis civilibus & minus criminalibus.

The

The reasons pretended are as poor as the opinion, * For saith he, the Common-wealth hath authority to dispose of the estates of the subjects, and to translate them from one man to another, as may be found most availing to the publique good; and here there appeares just cause so to doe, least the form of publique judgements should be perverted, not without great scandall to the people, neither is there any way possible to help this particular mans inconvenience and losse; therefore the Common-wealth may ordain that in such a case the Judge should follow the publique forme of judicature, though hereby it fallerh out that a guiltlesse man is undone in his fortunes, and yet his cause known to be good by him that condems it. Thus he.

But what a loose point is this?

* Less. de Jure &c. l. 2. de Jud. ce Dub. 10. *Qui resp. habeat authoritatem disponendi, &c.*

why hath not a man as true propriety in his estate as his life? or what authority hath the Common-wealth causelessly to take away a mans substance or inheritance being that he is the rightfull owner, more than piece of himself? When his patrimony is setled upon him, and his in a due course of law and undoubted right of possession, what just power can claim any such interest in it, as without any ground of offence to dispossess him? Or what necessity is there that the form of publique judgements should be perverted, unless an honest defendant must be undone by false sentence? Or rather is not the form of publique judgement perverted, when innocence suffers for the maintenance of a formality? Or how is the Judge other than a partner in the injury, if for want of his seasonable interposition a good cause is lost, and a false plea prevails.

That

That therefore, which in the second place he alledgeth, that the Subject can have no reason to complain of the Judge, for as much as it is out of his power to remedy the case, and to passe other sentence than is chalked forth by the rule of Law; might as well be alledged against him in the plea of life and death, wherein he will by no means allow the Judge this liberty of an undue commendation, neither is there any just pretence, why an honest and well-minded Judg should be so sparing in a case of life, and so too prodigal in matter of livelyhood.

As for this third reason, that the mis-judgement in case of a pecuniary damage or banishment, may be afterwards capable of being reversed, and upon a new Traverse the cause may be fetcht about at further leisure; whereas death once inflicted is past all power of revocation; It may well

inferre that therefore there should be so much more deliberation, and care had in passing sentence upon capital matters, than civil, by how much life is more precious and irrevocable, than our worldly substance, but it can never inferre that injustice should be tolerable in the one, not in the other. Justice had wont to be painted blind-fold, with a pair of scales in her hand; wherefore else, but to imply that he, who would judge aright, must not look upon the issue or event, but must weigh impartially the true state of the cause in all the grounds, and circumstances thereof, and sentence accordingly? To say then that a Judge may passe a doom formally legal, but materially unjust, because the case upon a new suit may be reputed, were no other than to say, I may lawfully wound a man, because I know how to heal him again.

Shortly therefore, whether it be in causes

causes criminal, or civil, whether concerning life or estate, let those who sit in the seat of Judicature, as they will answer it before the great Judge of the World, resolve (what event soever follow) to judge righteous judgement; not justifying the wicked, not condemning the innocent; both which are equally abominable in the sight of the Almighty.

CASE VII.

Whether, and in what cases am I bound to be an accuser of another.

TO be an accuser of others, is a matter of much envy, and detestation, insomuch as it is the style of the Devil himself to be *accusator fratrum*, an accuser of the brethren: Yet not of his own brethren in evil; It was never heard that one evil spirit accused another; but of *our bre-*

thren, Revel. 12. 10. it was a voice from heaven which called him so: Saints on earth are the brethren of the glorious spirits in heaven; It is the wickedness of that malicious spirit to accuse Saints: But though the act be grown into hatred, in respect both of the Agent and of the Object; yet certainly there are cases wherein it will become the Saints to take upon them the person, and office of accusers.

Accusation therefore is either voluntary, or urged upon you by the charge of a superiour. Voluntary is either such as you are moved unto by the Conscience of some hainous and notorious crime committed, or to be committed by another, to the great dishonour of God, or danger of the common peace, whereto you are privy: or such as whereunto you are tyed by some former engagement of vow, or oath: In the former kinde;

a

a worthy Divine in our time travelling on the way, sees a lewd man committing abominable filthinesse with a beast, the sin was so foul and hatefull, that his heart would not suffer him to conceal it; he therefore listens to the next Justice, accuses the offender of that so unnatural villany, the party is committed, indicted, and upon so reverend (though single) testimony found guilty.

Or, if in the case of a crime intended, you have secret, but sure intelligence, that a bloody villain hath plotted a treason against the sacred person of your Soveraign, or a murther of your honest neighbour, which he resolves to execute; should you keep this fire in your bosom, it might justly burn you. Whether it be therefore for the discovery of some horrible crime done, or for the prevention of som great mischief to be don, you must either be an accuser, or an accessary.

The

The obligation to accuse is yet stronger, where your former vow or oath hath first ingaged you to a just discovery; you have sworn to maintain and defend his Majesty's royal Person, State, Dignity, and to make known those that wilfully impugn it; if now, you shall keep the secret counsels of such wicked designments, as you shall know to be against any of these, how can you escape to be involved in a treason, lined with perjury?

These are accusations which your conscience will fetch from you, unasked: But if being called before lawful authority, you shall be required upon oath, to testifie your knowledge even concerning offendors, of an inferiour nature, you may not detain your witnesse, though it amount to no lesse than an Accusation. Yet there are cases, wherein a Testimony thus required, tending to an accusa-

tion,

thun, may be refused. As in case of duty, and necessity of natural, or civil relation. It were unreasonably unjust for a man to be pressed with interrogations, or required to give accusatory testimonies in the case of parents, or children, or the partner of his bed: Or if a man out of remorse of conscience shall disclose a secret sin to you formerly done, in a desire to receive counsell, and comfort from you; you ought rather to endure your soul to be fetch out of your body, than that secret to be drawn out of your lips: Or if the question be illegal, as those that tend directly to your own prejudice, or those which are moved concerning hidden offences, not before notified by publique fame, or any lawfull ground of injury, which therefore the Judge hath no power to ask. In these cases, if no more, the refusall of an accusation, though required, is no other than justifiable.

But

But where neither the conscience of the horridnesse of a crime done, nor prevention of a crime intended, nor duty of obedience to a lawfull authority, nor the bond of an inviolable pre-ingagement, call you to the Bar; It is not a more uncharitable than thankleſſe office to be an accuſer: Hence it is that Delators, and Informers, have in all happy and wel-governed States, been ever held an infamous and odious kind of Cattel. A *Tiberius*, and a *Domitian*, might give both countenance and reward to them, as being meet factors for their tyranny, but a *Veſpaſian*, and *Titus*, and *Antonius Pius*, and *Macrinus*, or what ever other Princes carryed a tender care to the peace and wel-fare of their Subjects, whipt them in the publique Amphitheater, and abandoned them out of their dominions, as pernicious, and intolerable. And as theſe mercenary Flies, whether of State,

State, or of Religion, are justly hatefull, next to the publique executioners, so certainly, those busie spirited-men, which out of the itching humor of medling, run from house to house, with tales of private detraction, may well challenge the next roome in our detestation. This together with the other, is that which God so strictly forbids in his law, *Levit. 19. 16. Thou shalt not go up and down as a Tale bearer amongst thy people, neither shalt thou stand against the blood of thy neighbour: I am the Lord.* A practice which wise *Solomon*, though a great King; and (as one would think) out of the reach of tongues, cries down with much feeling bitternesse; *Prov. 18. 8. The words of the Tale bearer are as wounds, and they goe down into the innermost parts of the belly:* No lesse than five severall times in his divine * Proverbs, inveighing sharply (as if

* Prov. 11. 13. 20. 19. 26. 20. 16. 28.

him-

himself had been hung in this kinde against these close back-biting calumniations.

Shortly then, accuse when you are forced, either by the foulnesse of the fact, or the necessity of your duty; otherwise reserve your tongue for better offices.

Case VIII.

Whether a prisoner indicted of a felonious act which he hath examined, and interrogated by the Judge concerning the same, may stand upon the demurr, and plead Not guilty.

THe Casuists vary, and out of respect to their own Laws, are much perplexed in their resolutions, making the great scruple to be in the Juridical interrogations, (which if the Judge have not proceeded in the due form of Law required in such cases)

cases may warrant the offendors denial; and secondly, making difference of the quality of the offence, and danger of the punishment, which if no lesse than capital, may (say they *) give just ground to the accused party, either to conceal the truth, or to answer with such amphibolies, and aequivocations, as may serve to his own preservation; in which course, natural equity will bear him out, which allowes every man to stand upon his own defence: And the case I perceive is aggravated in forain parts, as by the Rack, so by an Oath administred to the person accused (which they call † *Juramentum calumniæ*) which *Lessius* justly calls a spiritual torture, by the vertue whereof, he solemnly urged, not to deny what he knows, or believes to be true, concerning the bu-

* Rodriguez. Tract. Ordinis Judicialis cap. 10.
† Sotus l. 5. q. 6. de Justi. et Rei, Art 2

sinesse

sinesse questioned: A practise, which I cannot blame. *Lessius*, if he professe to wish that the Pope, and all secular Princes, would joyn together to abrogate it, as being an evident occasion of much perjury. To lay down and determine the case as it stands with us in our ordinary proceedings of Justice, it must be premised.

1. To deny a known truth, and to aver a wilfull lye, cannot be other than a sin.

2. There is a vast difference betwixt concealing a truth and denying it.

3. It may be sometimes lawfull to conceal some Truths, though never lawfull to deny or contradict them.

4. No man can be bound directly to accuse himself.

5. It is consonant to natural equi-

* Less. de jur. l. 2 cap. 13. dub. 32.

ty

ty, that a man for the saving of his life should use the help of all evasions that are not sinfull.

6. It cannot be sinfull to put himself upon a legal trial in a case importing his life.

7. There is no place for a legal trial, where there is an absolute confession of guiltinesse.

These positions being pre-required, I say, that it is lawfull for the prisoner, though convinced in his conscience of the fact, yet to plead Not guilty to the Indictment at the Bar: for as much as he doth thereto, according to the sense both of the Judge, and Jury, onely hide and keep back that Truth, the finding out, and evidion whereof, lyes upon their further search and proof, so as he doth, in pleading *Not guilty*, in effect as good as say, What ever I find in my self, I have no reason to confesse my guiltinesse; I stand upon my lawfull de-

fence

fence, and cast my self upon my just triall; Yeilding my self only so far guilty, as your evidence and proofs can make me: let Justice passe upon me, I have no reason to draw on my own condemnation. The plea thus construed is lawfull, and just, wherein not the shuffling equivocations of the offendor, but the upright verdict of a legall Jury must carry the cause: to which purpose, that which sounds as a denyall in the accused, is nothing else but a professed referring himself to a Judiciall triall of that fact, which he is not bound to confesse.

But when the hand of God hath once found out the man in his sin, and he finds himself legally convinced of his crime; it greatly behoves him (as *Joshuah* charged *Achan* after the lot had discovered his sin) to give glory to God, in a free and full confession of his wickednesse, and to be more open and ingenuous in his acknowledgement.

ledgement, than he was close, and reserved in his plea: wherein as he shall discharge his conscience to that great and holy God, whom he hath offended, so he shall thus render some kind of poor satisfaction to that Society of men, whom he hath scandalized by his crime. In which regard I cannot but marvel at the strange determination of learned * *Azpilcueta*, the Oracle of *Confessaries*, who teaches, that the prisoner, who being rightly interrogated by the Judge, stood stiffly in denial of the fact, and is upon his Condemnation (carried to his execution, is not bound at his death to confesse the crime to the world, if he have before secretly whispered it in the ear of his ghostly father, and by him received absolution.

A sentence, that allowes the smothering of truths, and the strangling of just satisfaction to those who are

* Manu. Azpil. Navar. cap. 27. num. 38.

concerned,

concerned, as patience, in the offence, and lastly, highly injurious to publique Justice; whose righteous sentence is by this means left questionable, and obnoxious to unjust censure.

How much more requisite were it that a publique confession should, in this case save the labour of a private, whereby certainly, the soul of the offender would be more sensibly unloaded, justice better vindicated, more glory would accrue to God; and to men more satisfaction.

But however it be lawfull for the accused to stand upon these points of legality in the proceedings against him: yet for my own part, should I be so far given over as to have my hand in blood; and thereupon be arraigned at the bar of publique Justice; I should out of just remorse be the first man that should rise up against my self; and (which in other mens

mens cases were utterly unlawfully be my own Accuser, Witnesse, and Judge: and this disposition I should rather commend in those, whose conscience hath inwardly convicted them for hainously criminous; that since they had not the grace to resist so flagitious a wickednesse, they may yet endeavour to expiate it, before men, with an ingenious confession: as before God, with a deepe and serious repentance.

Case IX.

Whether, and how far a man may take up armes in the publique quarrell of a war.

WAr is no other than a necessary evil; necessary in relation to peace: onely, as that without which so great a blessing cannot bee had: As the wise Woman said to *Joab*,

Joab, 2 *Sam.* 20. 18. they should first treat with the men of *Abel*, ere they smite: & upon the charge of the Lord of hosts, *Deut.* 20. 10. conditions must first be tendred even to heathen enemies, before any acts of hostility shall be exercised; where this which is the worst of all remedies, proves needfull, if you ask how far it is lawfull to engage; I must aske you (ere I can return an answer) first of the justice of the quarrell: for surely where the war is known to be unjust, the willing abettors of it cannot wash their hands from blood. To make a war just (as our Casuists rightly) there must be a lawfull authority to raise it; a just ground whereon to raise it; due formes and conditions in the raising, managing, and cessation of it: That no authority lesse than supreme can wage a war, it is cleare in nature; for that none other besides it can have power

of

of life and death; which both must lye at the publique stake in warre.

That none but a just and weighty cause can be the ground of a warre, every mans reason apprehends; for how precious a blessing had that need to be, that is held worth the purchasing with the price of so much blood, and how heavy a curse must that needs be, which can onely be remedied, or prevented by so grievous a judgement as war?

That due terms and conditions are requisite to be offerred ere war be undertaken; and observed in the managing and ceasing of it, humanity it self teacheth us, without which men should run upon one another with no lesse fury and disorder than beasts, not staying for any capitulation but the first advantage, not terminating their discord in any thing but utter destruction.

Where all or any of these are wanting,

ting, the warre cannot be just: and where it is known not to be such, woe be to those hands that are willingly active in prosecuting it.

Now the case of all these three arain requisites must lie chiefly upon that Power, which is entrusted by the Almighty, with the over-ruling of publique affaires: For the subject, as he is bound to an implicite reliance upon the command of the supreme power; so (unelesse it be in a case notoriously apparent to be unjust) must yeeld a blind-fold obedience to authority; going whither he is led, and doing what he is bidden. But if the case be such, as that his heart is fully convinced of the injustice of the enterprise, and that he clearly finds that he is charged to imbrue Innocence, and to fight against God; I cannot blame him, if with Saul's footmen (when they were commanded to fall upon the Priests of the Lord) he withold

his hand, and craving pardon, shew lesse readinesse to act, than to suffer.

In the second place, I must ask you with what intentions you addresse your self to the field; if it be out of the conscience of man, in being a just cause, if out of a loyall obedience to lawfull authority: I shall bid you go on, and prosper: but if either malice to the parties opposed, and therein desire of revenge, or a base covertiousnesse of pay, or hope and desire of plunder have put you into armes; repent and withdraw: For what can be more sordid and cruell, than to be hired for dayes-wages to shed innocent blood? Or what can be more horribly mischievous for a Man, than to kill, that he may steal?

Upon your answer to these questions it will be easie for mee to return mine, In a just quarrell, being thereto lawfully called, you may fight;

warrantable authority hath put the sword into your hand, you may use it: But take heed that you use it with that moderation, and with those affections that are meet: Even an authorized hand may offend in striking. Magistrates themselves, if there be revenge in their executions, doe no other than murther: Far be it from you to take pleasure in blood, and to enjoy another mans destruction: If (especially in those wars that are intestine) you shall mingle your tears with the blood, which you are forced to spill, it may well become Christian fortitude.

Shortly, doe you enter into your armes, impress, or voluntary? If the former, you have nothing but your own heart to look unto for a fit disposition; That power, whom you justly obey, must answer for the cause; If the latter, you have reason diligently to examine all the neces-

sary points, of the power, of the cause, of your intentions; as well considering, that in a war it is no less impossible that both sides should be in the right, than that in a contradiction both parts should be true. Here therefore your will makes it self the Judg of all three; and (if any of them fail) leaves you answerable for all miscarriages; so as you had need to be carefully inquisitive, in this case, upon what grounds you go; that (for whatsoever may befall) a good conscience may bear you out in the greatest difficulties, and saddest events that are wont to attend upon war.

Case X.

Whether and how farre a man may act towards his own Death.

Directly to intend or endeavor that, which may work his own death, is abominably wicked, and no lesse than the worst murder.

For if a man may not kill another, much lesse himself; by how much he is nearer to himself than to another: and certainly if we must regulate our love to another by that to our selves, it must follow that love to our selves must take up the first room in our hearts: and that love cannot but be accompanied with a detestation of any thing that may be harmfull to our selves. Doubtlesse, many that can be cruell to another are favourable enough to themselves; but never man that could be cruel to himself would be sparing to another's blood.

To

To will or attempt this is highly injurious to that God, whose sole only are, who hath committed our life as a most precious thing to our trust, for his use, more than our own; and will require from us an account of our managing of it, and our parting from it. It is a foul misprision in those men, that make account of themselves as their own, and therefore think they are the absolute Lords of their life? Did they give themselves their own being? had they nothing but meer nature in them? can they but acknowledge an higher hand in their formation, and animating? What a wrong were it therefore to the great Lord and giver of life, to steal out of the world, without his leave that placed us there? But much more if Christians, they know themselves, besides, dearly paid for, and therefore not in their own disposing, but in his that bought

them. Secondly, most desperately injurious to our selves, as incurring thereby a certain damnation (for ought appears to lookers on) for ever, of those souls which have wilfully broken Gods more easie, and temporary prison, to put themselves upon the direfull prison of Satan to all eternity.

Nature it self, though not enlightened with the knowledge, of the estate of another world, found cause to abhor this practice: However the Stoical Philosophers, and some high Roman spirits following their doctrin, have been liberal of their lives; the Thebans of old professed detestation of this worst of prodigalities: And the Athenians enacted that the hand which should be guilty of such an act, should be cut off and kept unburied: And it was wisely ordained by that Grecian Commonwealth, when their Virgins (out of a peevish

peeviſh diſcontentment) were grown into a ſelf-killing humour, that the bodies of ſuch offenders ſhould be dragged naked through the ſtreets of the City, the ſhame whereof ſtopped the courſe of that mad reſolution.

It is not the heavieſt of croſſes, or the ſharpeſt bodily anguiſh that can warrant ſo foul an act. Well was it turned off by *Antiſthenes* of old, when in the extremity of his pain he cried out, Oh who will free me from this torment? and *Diogen* reached him a poynard, wherewith to diſpatch himſelf: Nay, ſaid he, I ſaid, from my torment, not from my life: as well knowing it neither ſafe nor eaſie, to part with our ſelves upon ſuch terms.

Far, far be it from us to put into this rank and file thoſe worthy Martyrs, which in the fervor of their holy zeal have put themſelves forward to martyrdome, and have cou-

regeously prevented the lust and fury of Tyrants to keep their chastity and faith inviolable. I look upon these as more fit objects of wonder, than either of censure, or imitation. For these (whom we may well match with *Sampson*, and *Eleazar*) what Gods spirit wrought in them, he knows that gave it; Rules are they by which we live, not examples.

Secondly, However we may not by any means directly act to the cutting of the thred of life; yet I cannot but yeald with learned * *Lessius*, that there may fall out cases, wherein a man may (upon just cause) doe, or forbear something whereupon death may indirectly ensue: Indirectly, I say, not with an intention of such issue; for it is not an universal charge of God, that no man should upon any occasion expose his life to a probable danger; if so, there would be

* Less. de Jure l. 2. c. 9. dub. 6.

no

no war, no traffique; but onely that he should not causelesly hazard himself; not with a resolution of wilfull miscarriage.

To those instances he gives of a soldier that must keep his station, though it cost him life: of a prisoner that may forbeat to flee out of prison, though the dores be open: of a man condemn'd to dye by hunger, in whose power it is to refuse a sustenance offered: of a man that latches the weapon in his own body to save his Prince: or of a friend, who when but one loafe is left to preserve the life of two, refraines from his part and dies first: or that suffers another to take that planke in a shipwreck, which himself might have prepossessed, as trusting to the oares of his armes: or that puts himself into an infected house out of meer charity to tend the sick, though he know the contagion deadly; or in a Sea-fight

blowes

blows up the deck with gun-powder, not without his own danger, or when the house is on fire, casts himself out at the window with an extreme hazard: To these, I say, may be added many more; as the cutting off a limb to stop the course of a Gangreen; to make an adventure of a dangerous incision in the body, to draw forth the stone in the bladder; the taking of a large dose of opiate pills, to ease a mortal extremity; or lastly, when a man is already seized on by death, the receiving of some such powerfull medecine, as may facilitate his passage (the defect of which care and art, the eminently-learned Lord * *Verulam* justly complains of in Physicians:) In these, and the like cases, a man may lawfully doe these things which may tend, in the event to his own death, though without an intention of procuring it.

* *Advancem.* L. Verul. Adv. of Learn.

And

And unto this head must be referred those infinite examples of deadly sufferings for good causes, willingly embraced for conscience sake. The seven Brethren in the *Maccabees*, (alluded to by St. *Paul* to his *Hebrews*, *Heb.* 11.35.) will and must rather endure the butchering of their own flesh, than the eating of Swines flesh, in a willing affront of their Law. *Daniel* will rather dye than not pray. *Shadrach*, *Meshach*, and *Abednego*, will rather fall down bound into the fiery Furnace seven-fold heated, than fall down before the golden Image.

And every right-disposed Christian will rather welcome death than yeeld to a willing act of Idolatry, Rebellion, Witchcraft: If hereupon death follow by the infliction of others, they are sinfull agents, he is an innocent sufferer.

As for that scruple among our Casuists, whether a man condemned to

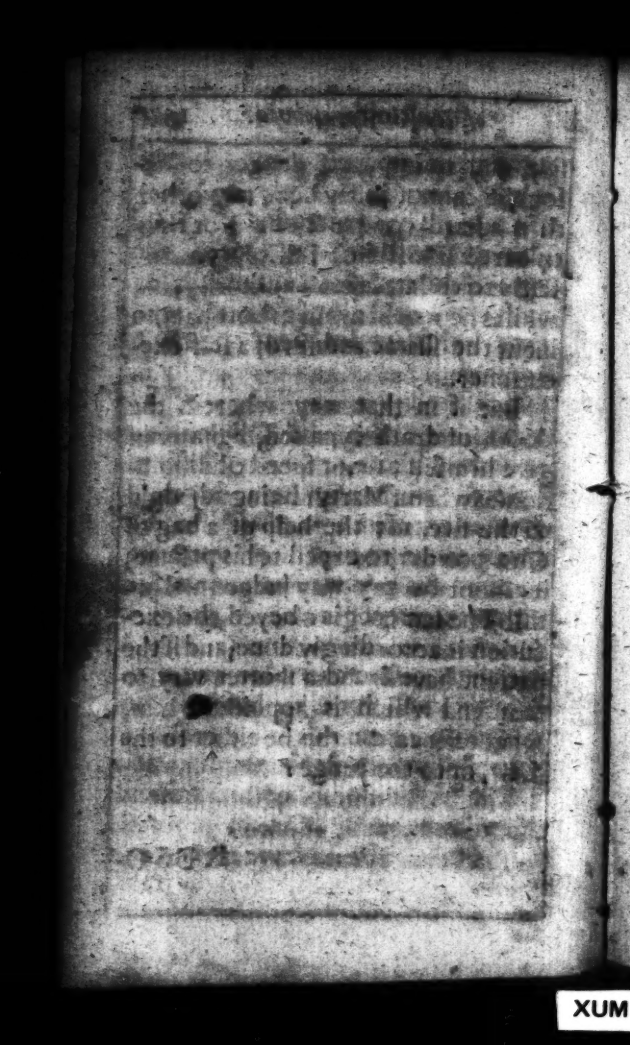
dye

dye by poyson, may take the deadly draught that is brought him: it is such, as wise *Socrates* never made of old, when the *Athenians* tendred him his hemlock; and indeed it may as well be disputed, whether a man condemned to dye by the Axe, may quietly lay down his head upon the Block; and not, but upon force, yeild to that fatall stroke. A juster scruple is, whether a man condemned to a certain and painfull death, which he cannot possibly eschew, may make choice rather of a more easie passage out of the world; wherein I marvel at the indulgence of some Doctors, that would either excuse, or mince the matter. For although I cannot blame that naturall disposition in any creature, to shrink from pain, and to affect (what it may) the shifting from extremity of miserie; yet for a Christian so to doe it, as to draw a greater mischief to himself

self, and an apparant danger to his soul, it cannot justly bear any other than a hard construction. For thus to carve himself of Justice, is manifestly to violate lawfull authority, and whiles he would avoid a short pain, to incur the shame and sin of a self-executioner.

But if in that way, wherein the doom of death is passed, a man can give himself ease, or speed of dissolution (as when a Martyr being adjudg'd to the fire, use the help of a bag of Gun-powder, to expedite his passage) it cannot be any way judged unlawfull: The sentence is obeyed, the execution is accordingly done, and if the patient have found a shorter way to that end which is appointed him, what offence can this be either to the Law, or to the Judge?

RESO-



RESOLUTIONS.

The third Decade.

Cases of Piety and Religion.

Case 1.

Whether upon the appearance of Evill Spirits we may hold discourse with them; and how we may demean our selves concerning them.

THat there are evil spirits is no lesse certain than that there are men: None but a Seduced, or an Atheist can make question of it.

That evill spirits have given certain

tain proofs of their presence with men, both in visible apparitions, and in the possessions of places, and bodies, is no lesse manifest, than that we have souls, whereby they are discerned.

Their appearances are not wont to be without grievous inconveniences; whether in respect of our dreadfulnesse, or their dangerous insinuations.

It is the great mercy of the God of Spirits, that he hath bound up the evil Angels in the chains of darknesse, restraining them from those frequent, and horrible appearances which they would otherwise make to the terror, and consternation of his weak creatures.

Whensoever it pleaseth the Almighty, for his own holy purposes, so farre to loosen, or lengthen the chains of wicked spirits, as to suffer them to exhibit themselves in some

assumed

assumed shapes unto men, it cannot but mainly import us to know, what our deportment should be concerning them. Doubtless to hold any fair terms of commerce, or peace much more of amity and familiarity with them, were no better than to profesſe our selves enemies to God; for such an irreconcileable hostility there is betwixt the holy God, and these malignant spirits, that there can be no place for a neutrality in our behaviour to them; for as he is an absolute enemie to the one, that bids not open defiance to the other.

As therefore we are wont by our silence to signifie our heart-burning against any person (in that we abide not to speak unto those whom we hate,) so must we carry our selves towards evil spirits: And if they begin with us, as that Devil did in the Serpent with Eve, how unsafe and deadly it may be to hold that

with

with them, appears in that first example of their onset, the issue whereof brought misery and mortality upon all mankind; yet then, were our first parents in their innocency, and all earthly perfection; we now so tainted with sinne, that Satan hath a kind of party in us, even before his actual temptations.

As therefore we are wont to say that he fortifies that yields to parley is half won, so may it prove with us, if we shall give way to hold discourse with wicked spirits, who are far too crafty for us to deal withall; having so evident an advantage of us, both in nature (we being flesh and blood, they spiritual wickednesse) and in duration, and experience, we being but of yesterday, they coetaneous with the world and time it self.

If you tell me, that our Saviour himself interchanged some speeches with the spirits whom he ejected; it

is

is easily answered, that this act of his was never intended for our imitation; for his omnipotence was no way obnoxious to their malice, our weakness is.

I cannot therefore but marvell at the boldnesse of those men, who professing no small degree of holinesse, have dared to hold familiar talk with evil spirits, and could be content to make use of them for intelligence; as the famous Jesuit, in our time, *Pere Cotton*; who having provided 36. questions to be propounded to a Diamondack (some concerning matters of learning, some other matters of State, concerning the then French King and the King of *England*) and having them written down under his own hand to that purpose; being questioned concerning it, answered, that he had licence from *Rome* to tender those demands, as I received it upon certain relation from the learned

learned Dr. *Tilenus* with many pregnant and undeniable circumstances, which I need not here expresse. Although this need not seem strange to me, when I finde that * *Navarre* determines plainly, that when evill spirits are present (not by our invocation) as in possessed bodies, it is lawfull to move questions to them, (so is be without our prayers to them, or pact with them for the profit of others;) yea, thus to confer with them, even out of vanity, or curiosity, is but venial at the most: Thus he with whom † *Lessius* goes so far as to say, *Licitum est petere verbo à Diabolo ut nocere desinat*, &c. It is lawfull to move the Divill in words to cease from hurting, so that it be not done by way of deprecation, or in a friendly compliance, but by way of indignation: A distinction which I confesse past the capacity

* Navarr. Enchir. cap. 11. n. 28. † Less. l. 2. de vulgis cap. 44. [illegible]

pacity of my apprehension, who have not the wit to conceive how a man can move without impliging a kinde of fnit, and how any fait can consist with an indignation.

It favours yet of a more heroicall spirit, which the Church of Rome professeth to teach and practise, the ejection of evill spirits by an imperious way of command, having commanded to her Exorcists a power of Adjuration, to which also the worst of Devils must be subject, a power more easily arrogated, than really exercised, Indeed, this over-ruling authority was eminently conspicuous, not onely in the selected twelve, and the seventy Disciples of Christ, who returned from their Embassie with joy, (Luk. 10.17.) that the Devils were subject to them through his name, but even in their holy Successors of the Primitive Church, while the miraculous gifts of the holy Ghost were sensibly pos-

ted

red our upon men; but if they will be still challenging the same power, why doe they not as well lay claim to the speaking of strange tongues? (*Mar.* 16.17. 18. to the super-natural cure of all diseases? to the treading on serpents and scorpions? to the drinking of poysons without an Antidote? and if they must needs acknowledge these faculties above their reach, why doe they presume to divide the spirit from it self, arrogating to themselves the power of the greatest works, whiles they are professedly defective in the least? wherein surely, as they are the true successors of the sons of *Sceva*, *Act.* 19. 13. 14. 15. 16. who would be adjuring of Devils by the name of Jesus, whom St. *Paul* preached, for they can look for no other entertainment than they found from those Demoniacks, which was to be baffled, and beaten, and wounded.

Especially,

Especially, if we consider the foul superstition, and gross magick which they make use of in their conjurations; by their own vainly devised Exorcismes, feoffing a supernaturall vertue upon druggs, and herbs, for the dispelling, and shaving off all evill spirits. Because the books are not perhaps obvious, take but a taste in one or two: * In the *treasure* of *Exorcismes*, there is this following Benediction of Rue, to be put into an hallowed paper, and to be carried about you and smelled at for the repelling of the Invasion of Devils †. I conjure thee, ô thou creature of Rue, by the holy Lord, the Father, the Almighty and Eternall God, which bringeth forth grasse in the moun-

* Thesaurus Exorcismorum, atque Conjurationum terribilium, &c. Tho. Discursis dæmonum fraus Valerii Polydori Patavini. Ord. Minorum Conventualium † Vid. applicable. ‡ Rutæ in charta benedictæ super se portandæ olfaciendo, & omnem invasorem diabolicam repellendam.

caines and herbs for the use of man: And which by the Apostle of thy Sonne our Lord Jesus Christ, hast taught, That the weak should eat Herbs, I conjure thee that thou bee blessed, and sanctified to retain this invisible power and vertue, that whosoever shall carry thee about him, or shall smell to thee, may be free from all the uncleanness of Diabolicall infatuation, and that all Devills, and all Witchcrafts may speedily fall from him, as herbs or grasse off the earth: through the same our Lord Jesus Christ, which shall come to judge the quick and the dead, and the world by fire, The like is prescribed to be done to the seeds of *Hipericon* or St. *Johns-wort*.

* Add to this, the horrible fumigation to this purpose as it followes. I conjure thee O thou Creature of

Applicabile. 15. Tit. *Profumigatio horribilis, ejusque vulgata benedictio.*

Galbanum,

Galbanum, Sulphur, Assa fœtida, Aristolochium, Hipericon and *Rue*, by the † living God, by the † true God, &c. by Jesus Christ, &c. that thou be for our defence, and that thou be made a perpetuall fumigation, exorcised, † blessed, and consecrated to the safety of us, and of all faithfull Christians, and that thou be a perpetuall punishment to all malignant spirits, and a most vehement, and infinite fire unto them, more than the fire and brimstone of hell is to the infernall spirits there, &c.

But what doe I trouble you with these dreadful incantations, whereof the allowed books of Conjuration are full? To these I may ad their application of holy water, (wherein they place not a little confidence) which (saith *Lessius*) receives the force from the prayers of the Church, by the means whereof it comes to

* Lessius ubi supra Dubit. 5.

passe, that it is assisted with divine power, which (as it were) rests upon it, and joynes with it, to the averting of all the infestations of the Devill: But fain would I learn where the Church hath any warrant from God to make any such suit, where any overture of promise to have it granted? what is their prayer without faith? and what is their faith without a word? But I leave these men (together with their Crosses, and Cermonies, and holy reliques, wherein they put great trust in these cases) to their better informed thoughts. God open their eyes, that they may see their errors.

For us, what our demeanour should be in case of the appearance, or molestation of evill spirits, we cannot desire a better pattern than St. *Paul*, his example is our all-sufficient instruction, 2 *Cor.* 12. 7. 8. who when the messenger of Satan was sent to buffet

buffet him, fell presently to his prayers; and instantly besought God thrice, that it might depart from him. Lo, he that could command evill spirits out of the bodily possession of others, when it comes to his own turn to be buffeted by them, betakes himself to his prayers to that God, whose grace was sufficient for him: *verse 9.* To them must we still have our recourse; if we thus resist the Devil, he shall flee from us: *Jam. 4. 7.* In the Primitive times, those that could command, needed not to use: & therefore fasting and prayers, was an higher (as a more laborious) work (to this purpose) in the Disciples, than their imperative course of ejection; but for us, we that have no power to bid, must pray: Pray, not to those ill guests that they would depart, not to the blessed Virgin, or our Angel-Keeper that they would guard us from them, but to the great God of heaven,

who commands them to their chains: This is a sure and everlasting remedy, this is the onely certain way to their foile, and our deliverance, and victory.

Case II.

How farre a secret pact with evill spirits doth extend, and what actions and events must be referred thereunto.

IT is a question of exceeding great use, and necessity, for certainly many thousands of honest, and well-minded Christians are in this kinde drawn into the snares of Satan, unwarily, and unwittingly: For the determining of it, these two grounds must be laid, First, that there is a double compact with Satan; One direct and open, wherein Magicians and Witches, upon wofull conditions

and

and direfull ceremonies, enter into a mutual covenant with evil spirits: The other, secret and indirect, wherein nothing is seen, or heard, or known to be agreed upon; onely by a close implication, that is suggested and yeelded to be done, which is invisibly seconded by diabolical operation.

The second ground is, that whatsoever hath not a cause in nature according to Gods ordinary way, must be wrought either by good or evill spirits: that it cannot be supposed that good Angels should be at the command of ignorant, or vicious persons, of either sexe, to concurre with them in superstitious acts, done by means altogether in themselves ineffectable and unwarrantable: and therefore that the Devil hath an unseen hand in these effects, which he marvailously brings about, for the winning of credit with the world, and for the obliging and engaging of his

own Clients: of this kinde there is too lamentably much variety in common experience: Take an handfull if you please, out of a full sack: let the first be, that authentick charm of the Gospel of St. *John* allowed in the parts of the Romish correspondence, wherein the first verses of that Divine Gospel are singled out, printed in a small roundel, and sold to the credulous ignorants, with this fond warrant, that whosoever carries it about him shall be free from the dangers of the dayes mis-haps: The book and the key, the sieve and the sheeres for the discovery of the Thief; The notching of a stick with the number of the warts which we would have removed, the rubbing of them with raw flesh, to be buried in a dunghill that they may rot away insensibly therewith, or washing the part in moon-shine for that purpose: words, and characters, of no signification,

cation, or ordinary form, for the curing of diseases in man, or beast, more than too many whereof we find in *Cornelius Agrippa*, and *Paracelsus*.

Forms of words and figures for the stanching of blood, for the pulling out of thorns, for easing pain, for remedying the biting of a mad dog.

Amulets made up of Reliques, with certain letters and crosses, to make him that wears them invulnerable.

Whistling for a winde wherewith to winnow, as it is done in some ignorant parts of the west.

The use of an holed flint, hanged up on the rack, or beds-head, for the prevention of the night-mare in man, or beast.

The judging by the letters of the names of men or women, of their fortunes, as they call them, accor-

ding to the serious fopperies of *Arcandam*.

The seventh Sonne's laying on of hands for the healing of diseases; The putting of a verse out of the *Psalmes* into the vessel to keep the wine from sowring; The repeating of a verse out of *Virgil* to preserve a man from drunkennesse all that day following; Images astronomically framed under certain constellations to preserve from several inconveniences, as under the sign of the Lion the figure of a Lion made in gold, against melancholick fancies, dropsie, plague, fevers: which *Lessius* might well marvell how *Cajetan* could offer to defend; when all the world knows how little proportion and correspondence there is betwixt those imaginary signs in Heaven, and these reall creatures on Earth.

Judiciary Astrology, as it is commonly practised, whether for the casting

casting of nativities, prediction of voluntary, or civil events, or the discovery of things stoln or lost: for, as the natural Astrology, when it keeps it self within its due bounds is lawfull, and commendable, (although not without much uncertainty of issue;) so that other Calculatory, or figure casting Astrology is presumptuous and unwarrantable, cryed ever down by Councels and Fathers, as unlawfull; as that which lies in the mid-way betwixt magick, and imposture, and partakes not a little of both.

The anointing of the weapon for the healing of the wound, though many miles distant; wherein (how confident soever some intelligent men have been) doubtlesse there can be nothing of nature, sith in all natural agences, there must necessarily be a contraction either reall, or virtual; here in such an interval, none can

be

bee: neither can the efficacy be ascribed to the salve, since some others have undertaken and done the cure, by a more homely and familiar ointment. It is the ill-bestowed faith of the agent that draws on the success from the hand of an invisible Physician.

Calming of tempests, and driving away devills by ringing of bells, hallowed for that purpose.

Remedy of witcheries, by heating of Irons, or applying of Crosses. I could cloy you with instances of this kinde, wherewith Satan beguiles the simple upon these two mis-grounded principles, 1. That in all experience they have found such effects following upon the use and practise of such means, which indeed cannot be denyed: Charms and Spels commonly are no less unfailing in their working, than the best naturall remedies; doubtlesse, the Devill is a most skilful

full Artist: and can doe feats beyond all mortall powers; but God blesse us from imploying him: 2 *King.* 1. 3. Is it not because there is not a God in *Israel* that we goe to enquire of *Baal-Zebub* the God of *Ekron*?

2. That there may be hidden causes in nature for the producing of such effects, which they know not; neither can give any reason of their operations, whereof yet we doe commonly make use, without any scruple; and why may not these be ranged under the same head? which they have used with no other but good meaning, without the least intention of reference to any malignant powers; In answer whereto, I must tell them, that their best plea is ignorance, which may abate the sin, but not excuse it: There are indeed, deep secrets in nature, whose bottome we cannot dive into, as those wonders of the load-stone; a piece outwardly

contemptible, yet of such force as approacheth neer to a miracle: and many other strange sympathies and antipathies in several creatures; in which rank may be set the bleeding of the dead at the presence of the murtherer: and some acts done for the discovery of witchcraft both in this and our neighbour kingdom: But withall, though there be secrets in nature which we know not how she works; yet we know there are works which are well known, that she cannot doe: how far her power can extend is not hard to determine: and those effects which are beyond this, (as in the forementioned particulars) we know whither to ascribe: Let it be therefore the care and wisdome of Christians to look upon what grounds they goe: whiles they have God, and nature for their warrant, they may walk safely; but where these leave them, the way

leads

leades downe to the Chambers of death.

Case 111.

Whether reserving my conscience to my self, I may be present at an Idolatrous devotion? or whether in the same service of God I may communicate with wicked persons.

THe question is double: both of them of great importance. The former I must answer negatively, your presence is unlawfull upon a double ground; of sinne, and of scandal: of sin, if you partake in the Idolatry; of scandal, if you doe but seem to partake: The scandal is three-fold; you confirm the offenders in their sin, you draw others by your example into sin, you grieve the spirits of those wiser Christians, that are the sad witnesses of your offence.

The great Apostle of the Gentiles (1 Cor. 8. 4, 5, 6, 7, 8, 9, 10.) hath fully determined the question in a more favourable case: the heathen sacrifices were wont to be accompanied (in imitation of the Jewish prescribed by God himself) with feasts; the owners of the feast civilly invite the Neighbours (though Christians) to the banquets; The Tables are spread in their Temples; The Christian guests, out of a neighbourly society, goe, sit, eate with them: St. Paul cryes down the practise, as utterly unlawfull: yet this was but in matter of meat; which sure was Gods, though sacrificed to an Idol; how much more must it hold in rites and devices, meerly, either humane, or devilish?

I need not tell you of the Christian Souldiers in the Primitive Persecution, who when they found themselves by an ignorant mistaking drawn, un-

under a pretence of loyalty, into so much ceremony as might carry some semblance of an Idolatrous thurification, ran about the City in an holy remorse, and proclaims themselves to be Christians? Nor how little it excused *Marcellinus* Bishop of *Rome* from an heavy censure, that he could say he did but for company cast a few grains of incense into the fire. The charge of the Apostle (1 *Thes.* 5. 22.) is full, and peremptory, that we should abstain from every appearance of evill.

It is a poor plea that you mention of the example of *Naaman*, Alas, an ignorant Pagan! whose body if it were washed from his leprosie, yet his soule must needs be still foule. 2 *Kings* 5. 17, 18, 19. yet even this man will thenceforth offer neither burnt-offring, nor sacrifice unto any other God, but unto the Lord, nor upon any ground but the Lords peculiar,

culiar; and will therefore lade two Mules with Israelitish earth, and is now a professed convert: Yes, but he will still bow in the Temple of *Rimmon*: But how will he bow? Civilly onely, not religiously; In the house of *Rimmon*, not to the Idol; Not in relation to the false Deity, but to the King his Master: you shall not take him going alone under that Idolatrous roof, but according to his Office, in attendance of his Soveraign; nor bowing there, but to support the arm that lean'd upon him: And if upon his return home from his journey he made that solemne protestation to his Syrians, which he before made to the Prophet: Take notice, O all ye Courtiers, and men of *Damascus*, that *Naaman* is now become a Proselyte of *Israel*, that he will serve and adore none but the true God, and if you see him at any time kneeling in the Temple of your Idol

Rimmon,

Rimmon, know that it is not done in any devotion to that false God, but in the performance of his duty and service to his royal Master; I see not but the Prophet might well bid him, *Goe in Peace*. However that ordinary and formal valediction to a *Syrian*, can be no warrant for a Christians willing dissimulation.

It is fit for every honest man to seem as he is; what doe you howling amongst Wolves, if you be not one? Or what do you amongst the Cranes, if you be a Stork? It was the charge of *Jehu*, when he pretended that great sacrifice to *Baal*; Search, and look that there be here with you none of the servants of the Lord, (2 *King.* 10. 23.) but the worshippers of *Baal* onely: surely had any of Gods Clients secretly shrouded himselfe amongst those Idolaters, his blood had been upon his own head: Briefly then, if you have a minde to keep your selfe in

in a safe condition for your soul, let me lay upon you the charge which *Moses* enforced upon the congregation of *Israel* in the case of *Corah*'s insurrection, *Depart I pray you from the tents of these wicked men, and touch no thing of theirs, lest ye be consumed in all their sins*, Numb. 16. 26.

The latter I must answer affirmatively: If the Ordinances be holy, why should you not take your part of them?

It is an unjust niceness, to abridge your selfe of a blessing, for another mans unworthiness: Doubtless, there ought to be a separation of the precious from the vile, the neglect whereof, is the great sinne of those, whom in duty it concerns to perform it; but where this is not accordingly done, shall I suffer for anothers offence? my own sinnes may justly keep me off from Gods Table, if another mans may doe so too, I appropriate the

the guilt of his sin to my own wrong? surely it argues but small appetite to these heavenly viandes, if you can be put off with a pretence of others faults: Judge of the spirituall repast by this earthly; were you throughly hungry, would you refrain from your meat, because one of the guests hath a pair of foul hands? that may be a just eye-sore to you, but no reason why you should forbear wholesome dishes: Carve you for your self, and look to your own trencher, he feeds for himself, not for you; sin is the uncleanneſſe of the soul, that cleaves closer to it, than any outward naſtineſſe can to the skin; to feed thus foul then is doubtleſſe unwholesome to himself, it can be no hurt to you. But you are ready to strain the comparison higher to your own advantage: say, that one of the guests hath a plague-sore running upon him, shall I then think it safe

safe to sit at the Table with him? now sin is of a pestilent nature, spreading its infection to others besides its own subject; therefore it is meet we keep aloose from the danger of his contagion: True there are sinns of a contagious nature, apt to diffuse their venome to others (as there are other some whose evill is intrinsecall to the owner) but these infect by way of evill counsails, or examples, or familiar conversation, not by way of a meer extemporary presence of the person, by spreading of their corruption to those that are taken with them; not by scattering abroad any guilt to those that abhor them. Well did our Saviour know how deadly an infection had seised on the soul of *Judas*, yet he drives him not from his board, least his sin should taint the Disciples.

The spirit that writes to the seven *Asian* Churches (*Rev.* 2. 20. 21. 22.) saw

saw and professed to see the horrible infection spread amongst the *Thyatirians* by the doctrine and wicked practises of their *Jesebel*, yet all that he enjoyns the godly party, into hold their own.

Have no fellowship saith the Apostle *with the unfruitfull works of darknesse, Eph.* 5. 11.) Loe, he would not have us partake in evill: he doth not forbid us to partake with an evil man in good works.

However therefore we are to wish and endeavour (in our places) that all the Congregation may be holy; and it is a comfortable thing to joyn with those, that are truly conscionable, and carefully observant of their wayes, in the immediate services of our God: yet where there is neglect in the overseers, and boldnesse in the intruders, and thereupon, Gods sacred Table is pestred with some unworthy Guests, it is not for you, upon this ground, to

to deprive your self of the benefit of Gods blessed Ordinances; notwithstanding all this unpleasing encombrance you are welcome, and may be happy.

Case IV.

Whether vowes be not out of season now under the Gospel, of what things they may be made; how far they obliged us; and whether, and how far they may be capable of release?

IT is a wrongfull imputation that is cast upon us by the Roman Doctors, that we abandon all vowes under the Gospel: They well see that we allow and professe that common vow (as *Lessius* terms it) in Baptisme; which yet both *Bellarmine*, and he, with other of their consorts, deny to be properly such: It is true, that as infants make it by their proxies,

proxies, there may ſeem ſome impropriety of the ingagement as to their perſons; but if the party Chriſtened be of mature age, he expreſſe vow is made abſolutely by, and for himſelf. Beſides this, we allow of the renovation of all thoſe holy vowes, (relating to the firſt) which may binde us to a more ſtrict obedience to our God, yet more, though we doe not now allow the vowes of things in their nature indifferent, to be parts of Gods worſhip, as they were formerly under the law; yet we doe willingly approve of them, as good helps and furtherances to us, for the avoiding of ſuch ſinnes as we are obnoxious unto, and for the better forwarding of our holy obedience.

That, the charge is of eternall uſe Pſal. 76. 11. *Vow unto God and performe it.* Not that we are bound to vowe, that act is free and voluntary:

but that when we have vowed, we are stratly bound to performance: It is with us for our vowes as it was with *Ananias* and *Saphira* for their substance. Whiles it remained (saith S. *Peter*) was it not thine own? (*Acts* 5. 4.) Hee needed not to sell it, he needed not to give it; but if he will give, he may not reserve: If he profess to give all, it is death to save some; he lies to the holy Ghost, that defalks from that which he engaged himself to bestow.

It mainly concerns us therefore to looke carefully in the first place, to what we vow, and to our intentions in vowing, and to see that our vow be not rash and unadvised, of things either trivial, or unlawfull, or impossible, or out of our power to performe; for every Vow is a Promise made to God, and to promise unto that great and holy God, that which either we cannot, or ought not to doe

what

what is it other than to mock and abuse that Sacred Majesty, which will not hold him guiltless that taketh his name in vain? It is the charge to this purpose of wise Solomon, *Be not rash with thy mouth, and let not thine heart be hasty to utter any thing before God: for God is in heaven, and thou upon earth; therefore let thy words be few*, Eccles. 5. 2.

Your vow therefore must be either of things morally good, for the quickening you in that duty which you are bound to doe: or of things indifferent in themselves, the refraining, or doing whereof, may tend either to the restraint from sin, or the furtherance of your holy obedience: As a man that finds his brains weak, and his inclination too strong to pleasing liquor, binds himself by a vow to drink no wine save onely at Gods Table: or a man that finds himself apt to be miscarried by his appetite,

confines himself by his vow to one dish, or to one meal for the day: or a man that finds himself given to the pleasure of gaming, to the loss of his time, and the weakening of his estate, curbs himself by his vow never to play for money: or a man that finds his prayers weak, & his flesh rebellious, vows, to tame his unruly desires and to stir up his duller devotions by fasting.

And as the matter of your vow must be carefully regarded; so also your intentions in vowing; for if you vow to doe good to an ill end, your thank is lost, and danger of judgement incurred: as if you vow to give almes for vain-glory, or ostentation: or, if God shall prosper your usurious, or monopolizing project, you will build an hospital, your vow is like to be so accepted, as the story tells us, the prayers were of that bold Curtizan, who coming to the shrine of

of S. *Thomas* of * *Canterbury* (as that traitor was stiled) devoutly beg'd, that through the intercession of that Saint, she might be graced with so winning a beauty, that might allure her paramours to a gainfull courting of so pleasing a Mistresse, when suddainly (as my author tells me) she was stricken blind: and certainly, so it might well be; for if a supposed Saint were invoked, it was God that was highly provoked by the sinfull petition of a shamelesse harlot: and it was most just for him to revenge it; and so we may well expect it shall be with whosoever shall dare to make use of his sacred name to their own wicked or unwarrantable purposes.

Since therefore our vows must be for their matter (as Casuista well determine) *De meliore bono*, and for intentions, holy and directed onely to good; it plainly appears that many

* Bromiard. sum. prædict.

idle purposes, promises, relolutions, are wont to passe with men for vows which have no just claim to that holy title? One sayes he vowes never to be friends with such a one that hath highly abused him; another, that he will never come under the roof of such an unkind neighbour; one that he will drinke so many healths to his honoured friend; another that he will not give the wall or the way to any passenger: one that he will never wear suit but of such a color, another that he will never cut his hair till such an event. These, and such like may be foolish, unjust, ridiculous self engagements, but vows they are not, neither therefore doe bind the conscience, otherwise than as lewd words and wishes, which he may break as a shred of row, *Judg.* 16. 9. 11.

But as for true vowes, certainly they are so binding, that you shall sin

heinously

honeſtly in not performing them: It is not better than diſhoneſtly to fail in what we have promiſed to men; but to diſappoint God in our vows, is no leſſe than ſacrilledge: That of *Solomons* is weighty, Eccleſ. 5. 4, 5, 6. *When thou vowest a vow unto God, defer not to pay it; for he hath no pleaſure in fooles, pay that which thou haſt vowed. Better is it that thou ſhouldſt not vow, than that thou ſhouldſt vow and not pay it. Suffer not thy mouth to cauſe thy fleſh to ſin, neither ſay before the Angel that it was an errour; wherefore ſhould God be angry at thy voice, and deſtroy the work of thine hands?* If therefore a lawfull and juſt vow have paſſed your lips, you may not be ſilent to God, and your ſelf in not keeping it.

But it ſhall fall out, that there proves to be ſome main inconvenience or impoſſibility in the fulfilling of this your ſolemne promiſe unto

God, whether through the extreme prejudice of your health, and life; or the over-swaying difficulty of the times what is to be done; surely as under the law (*Numb.* 30. 3, 4, 5.) it was left in the power of the parent to over-rule the vow of the child, so I doubt not but under the Gospel, it is left in the power of your spiritual Fathers, to order, or dispense with the performance of those vowes, which you would but cannot well fulfil: neither was it spoken in vain, nor in matter of fit is only, which our Saviour in way of authorization, said to his Apostles and their successors, *whatsoever ye shall binde on earth, shall be bound in heaven, and whatsoever ye shall loose on earth shall be loosed in heaven, Mat.* 18. 18 In this case therefore I should advise you to make your addresse to your spiritual pastor, and freely to lay open your condition before him, and humbly to submit

your

your self to his fatherly directions in that course, which shall be found best and safest for your soul: Think it not safe in a businesse of so high nature to rely upon your own judgement, and to carve but your own satisfaction; but regard carefully what God hath said of old, *The Priests lipps should keep knowledge, and they should seek the Law at his mouth: for he is the messenger of the Lord of hosts*, Mal. 2. 7.

CASE V.

Whom may we justly hold an Heretick, and what is to be done in the case of Heresie?

There is no one point wherein the Church of God hath suffered more, than in the mis-understanding of this question; How many cursed and innocents, have in these late ages

ages of the Church perished in this unhappy quarrel? yea, how many famous Churches have been most unjustly thunder-struck with direful censures of Excommunication down to the pit of hell upon pretence of this crime, which have been lesse guilty than their Anathematizers? And even amongst our selves how apt we are to brand one another with this hatefull mark where there is no true merit of such a reproach?

It much import us therefore to know who may be deservedly thus stigmatized by us: I have elsewhere somewhat largely insisted on this Theme, whither I might spare some lines to referre you; but, in short, thus: To let passe the original sense, and divers acceptions of the word, An Heresie is no other than an obstinate errour against the Foundation. All truths are precious, but some withall necessary; All errours are sinfull.

faulty, but ſome damnable; the haynouſneſſe of the error is according to the worth of the truth impugned: There are Theologicall veritics fit for us to know and believe; there are Articles of Chriſtian faith needfull to be known and believed: There are truths of meet and decent ſuperſtructure, without which the fabrick may ſtand; there are truths of the foundation ſo eſſential, as that without them it cannot ſtand: It is a maim to the houſe if but a tile be pulled off from the roof, but if the foundation be razed, the building is overthrown: this is the endeavour and act of hereſie.

But now the next queſtion will be, what doctrines they are which muſt be accounted to be of the Foundation; Our country-man *Fiſher* the Jeſuite, and his Aſſociates will tell you roundly, that all thoſe things, which are defined by the Church to be believed,

ved, are fundamentall: A large ground-work of faith: Doubtlesse the Church hath defined all things contained in the Scripture, to be believed; and theirs (which they call Catholike) hath defined all those Traditionary points which they have added to the Creed, upon the same necessity of salvation to be believed; now if all these be the foundation, which is the building? what an imperfect fabrick doe they make of Christian Religion, all foundation, no walls, no roofe? Surely it cannot, without too much absurdity, be denied, that there is great difference of Truths, some more important than others; which could not be, if all were alike fundamental: If there were not some special Truths, the belief whereof makes, and distinguisheth a Christian, the Authors of the Creed Apostolick (before the

*Relat. of the third Confer. p. 6.

other

other Symboles received anciently by the Church) were much deceived in their aim: He therefore that believes the holy Scriptures (which must be a principle presupposed) to be inspired by God; and as an abstract of the chief particulars thereof, professeth to believe and imbrace the Articles of the Christian faith, to regulate his life by the Law of Gods commandements, and his devotion by the rule of Christ prescribed; and lastly to acknowledge and receive the Sacraments expressly instituted by Christ; doubtlesse this man is by profession a Christian, and cannot be denyed to hold the foundation; and whosoever shall wilfully impugne any of these, comes within the verge of Heresie: wilfully, I say, for meere error makes not an Heretick; if out of simplicity, or grosse ignorance, a man shall take upon him to maintain a contradiction to a point of faith, be-

ing

ing ready to relent upon better light, he may not be thus branded : evidition and contumacy must improve his error to be heretical. The Church of *Rome* therefore hath been too cruelly-liberal of her censures this way, having beston'd this liver upon many thousand Christians whom God hath owned for his Saints : and upon some Churches more orthodoxe than her self, presuming upon a power which was never granted her from heaven) to state new articles of faith, and to excommunicate and barre all that shall dare to gainsay her oracles : Whereas the great Doctor of the Gentiles hath told us from the spirit of God, that there is but *one Lord, one Faith, one Baptisme*, (Ephes. 4. 5.) and what faith is that ? S. *Jude* tells us, *Jude* 3. *The faith that was once delivered the Saints* ; so that as well may they make more reiterations of Baptisme, and multiplicities of

of Lords, as more faiths than one: some explications there may be of that one faith, made by the Church, upon occasion of new sprung errors, but such as must have their grounds from fore-written truths, and such, as may not extend to the condemnation of them whom God hath left free: new articles of faith they may not be, nor binde farther than God hath reached them.

Heretics then they are, and onely they, that pertinaciously raze the foundation of the Christian faith; what now must be done with them? surely, first, if they cannot be reclaimed, they must be avoided: It is the charge of the beloved Disciple to the elect Lady, 2 *John* v. 10. *If any man come unto you and bring not* (that is, by an ordinary Hebraisme, of poses) *this doctrine, receive him not into your houses, neither bid him God speed*; But the Apostle of the Gentiles goes

yet

yet higher; for writing to *Titus* the great Super intendent of *Crete*, his charge is, *Tit.* 3. 10. *A man that is an Heretick, after the first and second admonition reject.*

Now, when we compare the charge with the person, we cannot but find that this rejection, is not a meer negative act, of refraining company, but a positive act of censure, so as he, who had power to admonish, had also power to reject in an authoritative, or judicatory way: He sayes then, *Devita*, reject or avoid, to as *Erasmus* too truly, but bitterly scoffs the Romish practise) *De vita tolle*: This of killing the Heretick, as it was out of the power of a spiritual supervisor, so was it no lesse farre from the thoughts of him that desired to come in the spirit of meekness. Figors were never ordained by the Apostle for arguments to confute Hereticks; this bloody Logick and

Di-

Divinity was of a much later brood, and is for a *Dominick*, not a *Paul* to own: for certainly faith is of the same nature with love, it cannot be compelled, perswasions may move it, not force: These intellectual sins must look for remedies of their own kinds. But if either they be (as it is often) accompanied with damnable blasphemies against God, whether in his essence, or attributes, or the three incomprehensible persons in the all-glorious Deity, or the blessed Mediator betwixt God and Man Jesus Christ, in either of his natures, or else, shall be attended with the publique disturbances and dangerous distempers of the Kingdome, or State wherein they are broached, the Apostle's wish is, but seasonable, in both a spiritual and a bodily sense, Gal. 5. 12. *Would to God they were cut off that trouble you*. In the mean time, for what concerns your self, if you know

know any such, as you love God, and your souls, keep aloof from them, as from the pestilence. * *Epiphanius* well compares heresie to the biting of a mad dog, which as it is deadly, (if not speedily remedied) so it is withall dangerously infectious, not the tooth only, but the very foam of that envenomed beast carries death in it; you cannot be safe, if you avoid it not.

* Epiphan. Tom. 1. l. 1.

CASE VI.

Whether the laws of men doe binde the Conscience, and how far we are tyed to their obedience.

BOth these extremes of opinion concerning this point, must needs bring much mischief upon Church and Kingdome: Those that absolutely hold such a power in humane laws make themselves slaves to men.

Those

Those that deny any binding power in them, run loose into all licentiousness: Know then that there is a vast difference betwixt these two; To bind the conscience in any act, and to bind a man in conscience to do or omit an act: Humane laws cannot do the first of them, the latter they may, and must doe: To binde the conscience is to make it guilty of a sin in doing an act forbidden, or omitting an act injoyned as in it selfe such: or making that act in it self an acceptable service to God, which is commanded by men: Thus humane lawes cannot bind the conscience: It is God onely, 1 *John* 3. 21. who, as he is greater than the Conscience, so hath power to binde or loose it: *Esay* 33. 22. It is he that is the onely Law-giver to the Conscience: *Jam.* 4. 12. Princes and Churches may make lawes for the outward man, but they can no more binde the heart, than they can

make

make it, In vain is that power, which is not inabled with coertion, now what coertion can any humane power claim of the heart, which it can never attain to know? the spirit of man therefore is subject onely to the father of spirits, who only sees and searches the secrets of it, and can both convince, and punish it.

Besides, well did penitent *David* know what he said, when he cryed out, *Against thee onely have I sinned*, Psal. 51. he knew that sinne is a transgression of the law, and that none but Gods law can make a sinemen may be concerned, and injured in our actions but it is God who hath forbidd us these wrongs to men, that is sinned against, in our acts of injustice and uncharitableness, and who only can inflict the spiritual (which is the highest) revenge upon offenders. The charge of the great Doctor of the *Gentiles* to his *Galatians*, was

Gal.

Gal. 5. 1. Stand faſt in the liberty wherewith Chriſt hath made us free, and be not intangled again in the yoak of bondage. What yoak of bondage was this, but the law of Ceremonies? What liberty was this, but a freedome from the bondage of that law? And certainly if thoſe ordinances, which had God for their author, have ſo little power to bind the conſcience as that the yoake of their bondage muſt be ſhaken off, as inconſiſtent with Chriſtian liberty; how much leſſe is it to be indured, that we ſhould be the ſervants of men, in being tyed up to ſin by their preſumptuous impoſitions?

The lawes of men therefore do not, ought not, cannot bind your conſcience, as of themſelves; but, if they be juſt, they bind you in conſcience to obedience. They are the words of the Apoſtle to his Romans, *Rom. 13. 5. Wherefore ye muſt needs be ſubject,*

fact; not only for wrath but also for conscience sake. However then their particular constitutions in themselves put no speciall obligation upon us, under pain of sin, and damnation; yet in a generall relation to that God, who hath commanded us to obey authority, their neglect or contempt involves us in a guilt of sin: All power is of God, that which the supreme authority therefore enjoins you, God enjoins you by it, the charge is mediately his, though passing through the hands of men.

How little is this regarded, in these loose times, by those lawless persons, whose practises acknowledge no soveraignty but titular, no obedience but arbitrary, to whom the strongest laws are as weapons to the *Leviathan, who esteemes Iron as straw, and Brasse as rotten wood*, Job 41. 27.

Surely had they not first cast off their obedience to him that is high-

er

er than the highest, they could no without trembling hear that weighty charge of the great God of Heaven, Rom. 13. 1. *Let every soul be subject to the higher powers: For there is no power but of God, and the powers that be, are ordained of God:* 1 Pet. 2. 13. *Submit your selves to every Ordinance of man for the Lords sake*, and therefore should be convinced in themselves, of that awe, and duty, which they owe to soveraignty, and know and resolve to obey God in men, and men for God.

You see then how requisite it is, that you walk in a middle way betwixt that excessive power, which flattering Casuists have been wont to give to Popes, Emperors, Kings, and Princes in their severall jurisdictions, and a lawlesse neglect of lawful authority: For the orthodox, wise, and just moderation whereof, these last ages are much indebted to the

the learned and judicious Chancellour of * *Paris*, *John Gerson*, who first so checked that over-flowing errour of the power of humane usurpation (which carried the world before it) as gave a just hint to succeeding times, to draw that stream into the right channell, in so much as † *Dominicus à Soto* complains greatly of him, as, in this, little differing from the *Lutheran* heresie: But in the way which they call heresie, we worship the God of our Fathers, *rendring unto Cesar the things that are Cesars, and unto God those things that are Gods*; yeelding our bodyes to *Cesar*, *Act.* 24. 14 reserving our souls for God: rendring to just Lawes our active obedience, to unjust, passive.

But in the mean time, farre be it

* Tract. de Vir. spec. lect. 4 Cit. Dom. à Soto ut infra † *Gersonu positio parum distat ab hæresi Lutherana.* Dominic. à Soto De Iure, &c. l. 1. qu. 6.

from

from us to draw this knot of our obligation harder and closer than authority it self intends it: What ever Popes may doe for their Decrees, certainly good Princes never meant to lay such weight upon all their Laws, as to make every breach of them (even in relation to the authority given them by God) to be sinfull.

Their Laws are commonly shut up with a sanction of the penalty imposed upon the violation: There is an *obedientia bursalis*, (as I remember *Gerson* calls it,) an obedience, if not of the person, yet of the purse; which Princes are content to take up withall. We have a world of sinnes (God knows) upon us in our hourly transgressions of the royal Laws of our Maker; but woe were us, if we should have so many sinnes more, as we break statutes. In penal Laws where scandal or contempt finde no

place, humane authority is wont to rest satisfied with the mulct paid, when the duty is not performed.

Not that we may wilfully incurre the breach of a good Law, because our hands are upon our purse-strings ready to stake the forfeiture; This were utterly to frustrate the end of good Laws, which doe therefore impose a mulct that they may not be broken; and were highly injurious to sovereign authority, as if it sought for our money, not our obedience, and cared more for gain, than good order; than which, there cannot be a more base imputation cast upon government: As then we are wont to say, in relation of our actions to the Laws of God, That some things are forbidden because they are sinfull, and some things are sinfull, because they are forbidden; so it holds also in the Laws of men, Some things are forbidden, because they are justly offensive;

offensive; and some other things are only therefore offensive because they are forbidden. In the former of these we must yeeld our carefull obedience, out of respect even to the duty it self; in the latter, out of respect to the will of the Law-giver; yet so, as that if our own important occasions shall enforce us to transgresse a penal Law, without any affront of authority or scandal to others, our submission to the penalty frees us from a sinfull disobedience.

Case VII.

Whether Tythes be a lawfull maintenance for Ministers under the Gospel; and whether men be bound to pay them accordingly.

As the question of *Mine* and *Thine* hath ever imbroyled the world; so this particular concerning

Tithes hath raised no little dust in the Church of God: whiles some plead them in the precise (*quoad partes*) due and necessary to be paid, both by the Law of God, and Nature it self; others decry them as a Judaical Law, partly Ceremonial, partly Judicial; and therefore either now unlawfull, or at least neither obligatory, nor convenient.

What is fit to be determined in a businesse so overagitated; I shall shut up in these ten propositions.

1. The maintenance of the legall ministery allowed and appointed by God was exceeding large and liberal.

Besides all the tithes of corn, wine, oyle, herbs, herds, flocks; they had forty eight Cities set forth for them, with the fields round about them, to the extent of two thousand cubits every way: They had the first fruits of wine, oyle, wooll, &c. in a large pro-

proportion; he was held to be a man of an evil eye that gave lesse than the fiftieth part: They had the first born of cattle, sheep, beeves, goats; and the price of the rest, upon redemption: even the first-born of men must ransome themselves at five shekels a man; They had the oblations and vowes of things dedicated to God: They had the ample loaves (or * cakes rather) of shew-bread; and no small share in meat-offerings, sin-offerings, trespasse-offerings, heave-offerings, shake-offerings; of sacrifices eucharisticall they had the breast and shoulder; of other, the shoulder, and the two cheeks; yea the very burnt-offerings afforded them an hide: Besides all these; all the males were to appear before the Lord thrice a year; none were exempted (as their Doctors tell us) but servants, deaf,

* Ten hand breadths long, five broad, seven fingers high.

dumb, idiots, blind, lame, defiled, uncircumcised, old, sick, tender, and weak, not able to travel, and no one of these which came up, might appear empty-handed.

What one I offer to particularize? there were no lesse than twenty four gifts alotted to the Priests, expressly in the Law; the severals whereof who so desires to see, may finde in the learned and profitable Annotations of Master *Ainsworth* *, out of *Maimonides*.

2. We can have no reason to imagine, that the same God who was so bountifull in his provisions for the legal Ministery, should bear lesse respect to the Evangelical, which is far more worthy and excellent than the other. Justly therefore doth Saint *Paul* argue from the maintenance of the one, a meet proportion for the fit sustentation of the other, 1 *Cor.* 9. 13.

* H. Ainsworth in Lev. 14. 9. ex Maimonide.

3. It

3. It is not fit for Gods ministers to be too intent to matter of profit; their main care must be the spiritual proficiency of the souls of their people; the secular thoughts of outward provisions must come in onely on the by; but howsoever they may not be intangled in worldly affairs; yet they ought in duty to cast so much eye upon these earthly things as may free them from neglect: It is to Timothy that S. Paul writes, that if any man provide not for his own, and especially for those of his own house, he hath denied the faith, and is worse than an Infidel, 1 Tim. 5. 8.

4. Under the Law the tenth part was precisely allotted by the owner of all things, for the maintenance of the sacred Tribe; And if the wise and Holy God had not found that a meet proportion for those that served at his Altar; he had either pitched upon some other, or left it arbitrary: yea

even before the law, *Gen.* 14. 20. *Abraham* (and in his loynes *Levi* himself) paid tithes to *Melchisedec* (*Heb.* 7. 4.) the priest of the most high God; and whether it were by his example, or by some naturall instinct, we finde the very heathen nations, after some great victory achieved, were wont to devote still the tithe of their spoiles to their Deities: so *Camillus*, when he had after a long siege taken the rich City *Vejos*, (a place of such importance, that upon the taking of it, he wished some great crosse might befall *Rome* for the tempering of so high a felicity) he presently offereth the tithe to his* Gods: yea it was their custome who were most devout to consecrate the tithe of all their increase to those Gods they were most addicted unto; in so much as the Romans noted it in their *Ca-*

* Ὅρρα δεῦ δεκάτην, &c. *Clem. Al. Strom.* 1.

cullus.

custos, that he therefore grew up to so vast an estate, because he still devoted the tithe of his fruits to *Hercules*. And * *Plin.* tells us that when they gathered their Frankincense, none of it might be uttered till the Priest had the tithe of it set forth for him.

5. There can be no good reason given, why we may not observe the very same rate of proportion in laying out the maintenance of the ministery under the Gospel, and if these rules and examples be not binding, (since Religion consisteth not now in numbers at all) yet there is no cause why Christian Kingdomes, or Common-wealths may not settle their choice upon the same number, and quantity with both Jews, and Gentiles.

6. The national lawes of this Kingdome have set out the same pro-

* Plin. l. 12. Bonger. de num. Mystic. [illegible]

portion of Tenths for this purpose; If therefore there were no other obligation from the law of God or of the Church, nor any precedents from the practise of the rest of the world, yet in obedience to our municipal lawes, we are bound to lay forth the tenth part of our increase to the maintenance of Gods service; and that tenth is as truly due to the minister, as the nine parts to the owner.

7. Since the tenth part is in the intention of the law both civil and ecclesiastical, dedicated to the service of God; and in the meer institution thereof, is allotted to Gods ministers, there can be no reason why it can be claimed, or warrantably received by Lay persons, for their proper use and behoof; so as this practise of Impropriation, which was first set on foot by unjust and sacrilegious Bull from Rome, is justly offensive both to God and good men; as misderiving the

well.

well-meant devotions of charitable, and pious souls into a strong channell. Nothing is more plain than that Tithes were given to the Church and in it, to God: how therefore that which is bequeathed to God may be alienated to secular hands, let the possessors look.

8. Let men be tied to make good the Apostles charge (since the legal rate dissolves) and it shall well satisfie those that wait upon Gods services under the Gospel; The charge of the Apostle of the Gentiles, is: *Let him that is taught in the word communicate to him that teacheth, in all good things*, Gal. 6. 6. wherein he adds, *vers.* 7. *Be not deceived, God is not mocked.* The charge is serious, and binding: and the required communication is universal; and that with a grave item of Gods strict observation of performance: we may not think to put it off, with *Ambrose*,

mis-

mis-pointed reading, of referring the *all goods things* to the teaching (a concept sensibly weak, and mis-constructive:) nothing is more evident than that it hath relation to the communicating; wherein (for ought I see) God intends a larger bounty to the Evangelical ministery than to the legal; where all is to be communicated, what is excepted? All, not exclusive of the owner; but imparted by the owner; Let this be really done, there will be no reason to stand upon the Tenths.

9. But that this may be accordingly done, there is no law that requires a meer arbitrariness in the communicators: the duty of the teacher is punctually set downe, and so well known that the meanest of the people can check him with his neglect: and why should we think the reciprocal duty of the hearer fit to be left loose, and voluntary: yet such

an

an apprehension hath taken up the hearts of two many Christians, as if the contributions to their ministers were a matter of meer Almes, which as they need not to give, so they are apt, upon easie displeasures, to upbraid: But these men must be put in minde of the just word of our Saviour; *The labourer is worthy of his wages*: The ministery signifies a service; a publique service at Gods altar; whereto the wages is no lesse due, than the meat is to the mouth of him that payes it; No man may more freely speak of tithes than my self, who receive none, nor ever shall doe: Know then ye proud ignorants, that call your Ministers your Almesmen, and your selves their Benefactors, that the same right you have to the whole, they have to a part: God and the same Lawes that have scoffed you in your estates, have allotted them their due shares in them,

which

which without wrong ye cannot detract: It is not your charity but your justice which they pursue for their own: Neither think to check them with the scornfull title of your servants; servants they are indeed, to God's Church, not to you; and if they doe stoop to particular services for the good of your souls, this is no more disparagement to them, than it is to the blessed Angels of God, to be ministring spirits, Heb. 1. 14. sent forth to minister for them who shall be heirs of salvation.

Shortly, it is the Apostles charge ratified in heaven, that they which labour in the word and doctrine should be remunerated with a double honour, that is not formall of words and complements, but reall of maintenance; which he laies weight upon his *Timothy* to injoyn, 1 *Tim.* 5. 17.

10. And surely how necessary it is that we should be at some certainty

in

in this case, and not left to the meer arbitrary will of the givers, it too well appeares in common experience; which tells us how ordinary it is, where ministers depend upon voluntary benevolences, if they due but upon some just reproof gall the conscience of a guilty beaver; or preach some truth which dis-relishes the palate of a prepossessed auditor, how he straight flies out, and not only withholds his own pay, but also withdraws the contributions of others: so as the free tongued teacher must either live by ayre, or be forced to change his pasture: It were easie to instance, but charity bids me forbear.

Hereupon it is, that these sporteulary preachers are fain to sooth up their many masters, and are so gaged with the fear of a starving displeasure, that they dare not be free in the reprehension of the daring sins of

their

their uncertain benefactors; as being charmed to speak either *platonia*, or nothing. And if there were no such danger in a faithful and just freedome, yet how easie is it to apprehend, that if even when the lawes enforce men to pay their dues to their ministers, they yet continue so backward in their discharge of them: how much lesse hope can there be that being left to their free choice, they would prove either liberal or just in their voluntary contributions?

How soever therefore in that innocent infancy of the Church, wherein zealous Christians out of a liberall ingenuity were ready to lay down all their substance at the Apostles feet, and in the primitive times immediately subsequent, the willing forwardnesse of devout people took away all need of raising set maintenances for Gods ministers; yet now in these depraved and hard-hearted

times

times of the Church, it is more than requisite, that fixed competencies of allowance should by good lawes be established upon them; which being done by way of Tithes in those countries wherein they obtaine, there is just cause of thankfulnesse to God for so meet a provision, none for a just opposition.

Case VIII.

Whether it be lawfull for Christians where they finde a country possessed by savage Pagans and Infidels, to arrive on the native inhabitants, and to seize, and enjoy their lands upon any pretence? and upon what grounds it may be lawfull so to do.

WHat unjust and cruel measure hath been heretofore offered by the Spaniard to miserable Indians, in this kind, I had rather you should

should receive from the relation of their own Bishop, *Las Casas*, than from my Pen.

He can tell you a sad story of millions of those poor Savages made away, to make room for those their superious successors; the discovery of whose unjust usurpation, procured but little thanks to their learned professors of *Complutum* and *Salamanca*. Your question relates to our own Case; since many thousands of our Nation have transplanted themselves into those Regions, which were prepossessed by barbarous owners? As for those Countries which were not inhabited by any reasonable creatures (as the *Bermudas*, or Summer-Islands; which were onely peopled with Hogs, and Deer, and such like brute cattle) there can be no reason why they should not fall to the first occupant; but where the land hath a known Master, the case must vary.

For

For the decision whereof some grounds are fit to be laid.

No Nation under Heaven but hath some Religion or other, and worships a God such as it is, although a creature much inferiour in very nature to themselves; although the worst of creatures, evil spirits: and that religion wherein they were breed, (through an invincible ignorance of better) they esteem good at least.

Dominion and propriety is not founded in Religion, but in a natural, and civil right: It is true that the Saints have in Christ, the Lord of all things, a spiritual right in all creatures; *All things are yours*, (saith the Apostle) *and you are Christs, and Christ is Gods*: but the spiritual right gives a man no title at all to any natural or civil possession here on earth; yea Christ himself, though both as God, and as Mediator, the whole world were his, yet he tells

Pilate

Pilate, My Kingdom is not of this world; neither did he (though the Lord Paramount of this whole earth) by vertue of that transcendent soveraignty, put any man out of the possession of one foot of ground which fell to him, either by birth or purchase. Neither doth the want of that spirituall interest debarre any man from a rightfull claime and tuition of these earthly inheritances.

The barbarous people were Lords of their own; and have their Sagamores; and orders, and formes of government under which they peaceably live, without the intermedling with other nations.

Infidelity cannot forfeit their inheritance to others; no more than enmity professed by Jewes to Christian Religion; can escheat their goods to the Crowns under which they live; yea much lesse; for those Jewes; living amongst Christian people,

people, have, or might have had means sufficient to reclaim them from their stubborn unbelief; but these savages have never had the least overture of any saving help towards their conversion? They therefore being as true owners of their native inheritances, as Christians are of theirs, they can no more be forced from their possessions by Christians, than Christians may be so forced by them: Certainly in the same terms wherein they stand to Christians, do also, in their judgement, Christians stand to them; and if it would seem hard to us, that an inundation of Pagans should (as heretofore it hath done) break in upon us, and drive us out of our native possessions; how could it seem lesse unjust in us to them?

Their Idolatries, and sins against nature are hainous and abominable; and such as for which God of old con-

condemned the seven Nations to an utter extirpation; But what commission have we for their punishment? Could we shew such a patent in this Case, as the Israelites had for their warres against *Amalek*, and those neighbouring hea hens, all were sure: But you know who said, *What have I to do to judge them that are without?* 1 *Cor.* 5. 12. And if he may not be a Judge, who may be an Executioner?

Refusal of Christianity can be no sufficient ground of either invasion or expulsion: sith violence is not the appointed way for plantation of the faith; which must be perswaded, and not compelled: that sentence therefore of Pope * *Gregory*, *Justum*

* Greg cap Pervenerabilem: & cap. Si non. 23 q. 4. *Justum sanctumque esse bellum, quod infidelibus à Christianis infertur, ut eis imperio subditis prædicari possit Christi Evangelium, ne si imperio subditi non sint; prædicationi & conversioni eorum qui crediderint impedimento esse possint.*

sanctumque

sanctumque esse bellum, &c. (That it is a just and holy warre, which is by Christians made against Infidels, that they being brought under subjection, the Gospel of Christ might be preached unto them; lest that if they should not be subjected, they might be an hindrance to preaching, and to the conversion of those that would beleeve.) is surely either not out of the chaire, or beside the cushion; and better beseems a successor of *Romulus*, than of *Peter*. I may not omit to acquaint you how hotly this main question was disputed by Spanish and Italian Divines upon the very first entrance of this litigious usurpation: At which time Pope *Alexander 6.* (*Anno* 1493.) gave his large Decretory Bull to *Ferdinand* King and *Isabella* Queen of *Castile* and *Aragon*, for his expedition against the barbarous Indians of the then newly discovered world: *Genesius Sepulveda* a learned

Spaniard

Spaniard writ then; in defence and incouragement of this holy invasion, a Dialogue, which he called *Democrates secundus*, which was published at *Rome*, by the procurement of *Antonius Augustinus*, Auditor of the Palace; which no sooner came abroad, then it was eagerly set upon by the Divines both of *Italy* and *Spain*; amongst these latter, the Doctors of *Salamanca*, and the *Complutenses*; and above them *Antonius Ramirus*, Bishop of *Segovia*, fall foul upon that offensive discourse, which *Genesius* would fain have vindicated by an Apology, set forth to that purpose; but how insufficiently, it were easie to shew, if it were as needfull: But to make the matter good, he thinks to back himself by the authority of great, and famous persons, both Counsellors and Doctors, by him cited; and above all

by

by that loud Bull of * *Alexander*; wherein yet for ought I see, the charge which is laid upon those Princes is onely to reduce the people living in those Islands and Countries to receive Christian Religion; which we may well apprehend more likely to be done by other means than by the sword.

After much agitation it pleased the King of *Spain*, to require the judgement of † *Franciscus à Victoria*, the famous Professor of Divinity at *Salamanca*, concerning this so weighty affair; which he hath published with such wisedom and moderation, as so great a businesse required; stating the question aright on both sides, both shewing the insufficiency of the received grounds of that Indian expedition, and directing to those

* *Decret & indultum Alex. 6 super expeditione, &c. Populos in ejusmodi insulis & terris degentes ad Christianam religionem inducere velitis & debeatis, &c.* † Franc. à Victoria Relect. de Indis.

just motives and rules of proceeding herein, as might be, in such a case, justifiable: to which grave and solid discourse of his, you may, if you please, be referred for further satisfaction.

Onwards I shall draw forth some few of such considerations from him as may serve for my present purpose.

First therefore it is lawfull for Christians to travell into any country under heaven, and as strangers to stay there, without any wrong done to the natives; A thing allowed by the law of nations derived from the law of nature. By which law it is every where held an inhumane thing to offer ill measure to a stranger. It is the argument that righteous Lot used to the worst of Pagans, the Sodomites, *Only unto these men do nothing; for therefore are they come under the shadow of my roof*, Gen. 19. 8.

And

And if before the division of nations, the earth lay freely open to all passengers without scruple, to travel whither they pleased, surely, that partition was never intended to warrant a restraint: And if nature have made the Sea and all the In-lets of it common, it were very injurious to abridge any nation of the free use of so liberall an element.

Secondly, it is lawfull for us to use traffique with those Infidels, and to interchange commodities with them, and to abide upon their coasts for negotiation, and to fish in their sea, and to take part of those profits which nature hath made common to all commers: And if those Pagans shall oppose us in so warrantable courses, it will be meet for us to tender them all fair satisfaction, perswading them that we intend no harm or prejudice to them in their persons, or estate, but much good to both, labouring

to win them by all courteous demeanour; But if they shall fly out, notwithstanding all our kind indeavours into a violent opposition of us; setting upon us in a hostile manner, offering to cut our throats in so unjust a quarrel, it is lawful for us to stand upon our defence, and to repel one force with another; and to use all convenient means for our security; and if we cannot otherwise be safe, to raise bulwarks or fortifications for our own indemnity; and if we finde our selves over-powered by implacable Savages, to call for the aid and assistance of our friends, and (if the enmity continue and proceed) of our Princes; since the just cause of war is the propulsation of publique injuries; and such injury is as great, as barbarous.

But if not so much cruelty of disposition, his feare and suspicion of a strange nation shal arm them against us;

us, our care must be so to manage our own defence, as may be least offensive to them; and therefore we may not take this occasion of killing their persons, or sacking their towns, or depopulating their countries; for that in this case they are no other than innocent.

If after all gentle intreaties, courteous usages, and harmless self-defence, they shall persist in a malicious hostility, and can by no means be reclaimed from their impetuous onsets; there is now just cause not to deal with them as innocents, but as enemies: and therefore to proceed against them accordingly.

But on higher and more warrantable title, that we may have to deal with these barbarous Indels, is, for the propagation of Christian Religion; and the promulgation of the Gospel of Jesus Christ amongst these miserable savages: For which we

have good ground from the charge of our Saviour: *Go preach the Gospel to every creature*; *Mar. ult.* and he that was in bonds for the name of the Lord Jesus, tells us, *the word of God is not bound*, 2 *Tim.* 2. 9. not bound, either in fetters, or within limits: Oh that we could approve to God, and our consciences, that this is our main motive and principal drift in our western plantations; but how little appearance there is of this holy care and endeavour, the plain dealer upon knowledge hath sufficiently informed us; Although I now hear of one industrious spirit that hath both learned the language of our new-Indians, and printed some part of the Scriptures in it; and trained up some of their children in the principles of Christianity: a service highly acceptable to God, and no less meritorious of men: The Gospel then may be, must be preached

to

to those heathens, (otherwise they shall perpetually remain out of the estate of salvation) and all possible means must be used for their conversion; But herein I must have leave to depart from *Victoria*, that he holds it lawful if the savages doe not freely permit (but goe about to hinder) the preaching of the Gospel, to raise war against them; as if he would have them cudgelled into Christianity: surely this is not the way: It is for Mahometans to professe planting Religion by the Sword; it is not for Christians, I. is a just clause therefore that he puts in, that the slaughters hereupon raised may rather prove an hinderance to the conversion of the savages, as indeed it fell out, the poor Indians being by these bloody courses brought into such a detestation of their masters, the Castilians, that they protest they would not goe to heaven if any Spaniards were there.

The way then to plant the Gospel of Christ successfully among those Barbarous souls, must be onely gentle, and plausible: first, by insinuating our selves into them by a discreet familiarity, and winning deportment, by an holy and inoffensive living with them, by working upon them with the notable examples of impartial Justice, strict piety, tender mercy, compassion, chastity, temperance and all other Christian virtues; and when they are thus won to a liking of our persons, & carriage, they will be then well capable of our holy counsels. Then will the Christian Faith begin to relish with them, and they shall now grow ambitious of that happy condition, which they admire in us: Then shall they be glad to take us into their bosomes: and think themselves blessed in our society, and cohabitation: Lo this is the true way of Christian conquests;

wherein

wherein I know not whether shall be the greater gainer, the victor, or the conquered; each of them shall blesse other, and both shall be blessed by the Almighty.

CASE IX.

Whether I need in case of some foul sin committed by me, to have recourse to Gods Minister for absolution; and what effect I may expect therefrom.

A Mean would doe well betwixt two extremes, the careless neglecter of our spiritual fathers on the one side, and too confident reliance upon their power, on the other. Some there are, that doe so over-trust their leaders eyes, that they care not to see with their own; others dare so trust their own judgement, that they think they may sleight their spiritual

guides: there can be no safety for the soul, but in a mid-way betwixt both these.

At whose girdle the keyes of the kingdom of heaven doe hang, me thinks we should not need dispute, when we hear our Saviour so expressly deliver them to *Peter*, in the name of the rest of his fellows; and afterwards to all his Apostles, and their lawfull successors in the dispensation of the doctrine and discipline of his Church: In the dispensation of doctrine to all his faithfull Ministers under the Gospel; In the dispensation of discipline to those that are entrusted with the managing of Church-government; with these latter we meddle not; neither need we, if we had occasion, after the so learned and elaborate discourse of the power of the Keyes, set forth by judicious Doctor *Hammond*, to which I suppose nothing can be added. The former

former is that which lies before us: Doubtlesse, every true minister of Christ, hath by vertue of his first and everlasting commission, two keyes delivered in his hand; the key of Knowledge, and the key of Spiritual Power: the one, whereby he is enabled to enter and search into, not onely the revealed mysteries of salvation, but also, in some sort, into the heart of the penitent; there discovering (upon an ingenuous revelation of the offender) both the nature, quality, and degree of the sinne; and the truth, validity, and measure of his repentance: The other, whereby he may in some sort either lock up the soul under sinne, or free it from sin; these keyes were never given him, but with an intention that he should make use of them upon just occasion. The use that he may and must make of them, is both general, and special: General, in publishing the

will

will and pleasure of God signified in his Word, concerning sinners; pronouncing forgiveness of sinners to the humble penitent, and denouncing judgement to the unbelieving and obdured sinner: In which regard he is as the Herald of the Almighty proclaiming war and full indignation to the obstinate; and tendring terms of pardon and peace to the relenting and contrite soul: or rather, as the Apostle stiles him, 2 Cor. 5. 20. God's Ambassador offering and suing for the reconciliation of men to God: and if that be refused, menacing full vengeance to sinners.

Specially, in a particular application of this knowledge and power to the soul of that sinner which makes his addresse unto him: Wherein must be inquired both what necessity there is of this recourse, and what aide and comfort it may bring unto the soul.

Two

Two cases there are wherein certainly there is a necessity of applying our selves to the judgement of our spiritual guides; The first is in our doubt of the nature and quality of the fact; whether it be a sinne, or no sinne; for both many sinnes are so gulloted over with fair pretences and colourable circumstances, that they are not to be deserved but by judicious eyes; and some actions which are of themselves indifferent, may by a scrupulous conscience be mistaken for haynous offences. Whither should we goe in these doubts, but to our Counsail learned in the Laws of God; of whom God himself hath said by his Prophet, *The Priests lips should keep knowledge; and they should seek the Law at his mouth; for he is the messenger of the Lord of Hosts*, Mal. 2. 7.

The second is in the irresoluble condition of our soules, after a known sin

sin committed; wherein the burdened conscience not being able to give ease unto it self, seeks for aid to the sacred hand of Gods Penitentiary here on earth, and there may finde it. This is that which *Elihu*, as upon experience, suggesteth unto *Job* on his dunghill, *Job* 33. 22. *The soul of the transgressor draweth near to the grave; and his life to the destroyers:* vers. 23. *But if there be a messenger* (of God) *with him, an interpreter, one of a thousand, to shew unto man his uprightnesse*, and the soundnesse of his repentance) vers. 24. *then he* (God) *gracious unto him, and saith, Deliver him from going down into the pit, I have found a ransome, &c.* vers. 26. *He shall pray unto God, and he will be favourable unto him, and he shall see his face with joy.* In case of some dangerous sicknesse of the body we must not our own skil, nor some ignorant Quack-salvers, but seek to a learned

and

and experienced Phyſician for the preſcription of ſome ſure remedies; whereas, if it be but for a ſore finger, or a tooth ach, we care onely to make uſe of our own receipts: And for inci-vil quarrels; if it be onely ſome ſleight brabble, we think to compoſe it alone; but if it be ſome main queſtion importing our freehold, we are glad to wait on the ſtairs of ſome judicious Lawyer, and to ſee him for adv'ce: How much more is it thus in the perilous condition of our ſoule? which as it is a part farre more precious than its earthly Tabernacle, ſo the diſeaſes whereto it is ſubject, are infinitely more dangerous and deadly.

Is your heart therefore embroyled within you, with the guilt of ſome hainous ſin? labour what you may to make your peace with heaven; humble your ſelf unto the duſt before the Majeſty whom you have offended;

tender, beat your guilty breast, water your cheeks with your tears, and cry mightily to the father of mercies for a gracious remission; but if after all these penitent indeavors, you finde your soul still unquiet, and not sufficiently apprehensive of a free and full forgivenesse, betake your self to Gods faithfull Agent for peace; Run to your ghostly Physician, lay your bosom open before him; flatter not your own condition; let neither fear nor shame stay his hand from probing and searching the wound to the bottom; and that being done, make carefull use of such spiritual applications as shall be by him administred to you: This, this is the way to a perfect recovery, and fulnesse of comfort.

But you easily grant that there may be very wholsome use of the ghostly counsel of your Minister in the case of a troubled soul; but you doubt

doubt of the validity and power of his absolution; concerning which it was a just question of the Scribes in the Gospel, *Who can forgive sinnes, but God only?* Mat. 9. 6. Our Saviour therefore to prove that he had this power, argues it from his divine omnipotence; *Herein hath authority to forgive sinnes, (ver. 7.)* that can say to the decrepit paralytick, *Arise, take up thy bed and walk, (ver. 9.)* none but a God can by his command effect this; he is therefore the true God that may absolutely say, *Thy sinnes be forgiven thee, (ver. 10.)* Indeed, how can it be otherwise? Against God only is our sin committed, against man only in the relation that man hath to God; He only can know the depth of the malignity of sin, who only knowes the soul wherein it is forged; He only who is the Lord of the soul, the God of spirits, can punish the soul for sinning;

ning; He onely that is infinite can doome the sinful soul to infinite torments; He onely therefore is must be, that can release the guilty soul from sin and punishment. If therefore Man, or Angel shall challenge to himself this absolute power to forgive sinne, let him be accursed.

Yet withall it must be veeded, that the blessed Son of God spake not those words of his last commission in vain; *whose soever sins ye remit, they are remitted unto them, and whose soever sinnes ye retain, they are retained*, John 20. 23. neither were they spoken to the then present Apostles onely, but in them to all their faithfull successors to the end of the world.

It can not therefore but be granted that there is some kind of power left in the hand of Christs ministers both to remit and retain sinne. Neither is this power given onely to the Governours

vernours of the Church, in respect of the censures to be inflicted, or relaxed by them, but to all Gods faithful ministers, in relation to the sins of men: A power not soveraign and absolute, but limited and ministerial, for either quieting the conscience of the penitent, or further aggravating the conscience of sin and terror of judgement to the obstinate and rebellious. Neither is this onely by way of a bare verbal declaration, (which might proceed from any other lips) but in the way of an operative and effectual application, by vertue of that delegate, or commissionary authority, which is by Christ intrusted with them. For certainly, our Saviour meant in these words to conferre somewhat upon his Ministers, more than the rest of the world should be capable to receive, or perform. The absolution therefore of an authorized person must needs be

of

of greater force and efficacy, than of any private man, how learned or holy soever, since it is grounded upon the institution and commission of the Sonne of God, from which all power and virtue is derived to all his ordinances: and we may well say, that whatsoever is in this case, done by Gods minister (the Key not erring) is ratified in heaven: It cannot therefore but be a great comfort, and cordial assurance to the penitent soul, to hear the messenger of God (after a careful inquisition into his spiritual estate and true sight of his repentance) in the name of the Lord Jesus pronouncing to him the full remission of all his sinnes.

And if either the blessing, or curse of a father goe deeper with us, then of any other whosoever, although but proceeding from his own private affection without any warrant from above; how forcible shall we esteem the

the (not so much apprecatory, as declaratory) benedictions, of our spiritual Fathers, sent to us, out of Heaven?

Although therefore you may perhaps, through Gods goodnesse, attain to such a measure of knowledge and resolution, as to be able to give your self satisfaction concerning the state of your soul; yet it cannot be amisse, out of an abundant caution to take Gods minister along with you, and making him of your spiritual Counsail, to unbosome your self to him freely, for his fatherly advice and concurrence: The neglect whereof through a kinde of either strangenesse, or mis-conceit, is certainly not a little disadvantageous to the souls of many good Christians. The Romish Laity makes either Oracles, or Idols of their Ghostly Fathers; if we make Ciphers of ours, I know not whether we be more injurious

rious to them, or our selves. We give not about to rack your consciences to a forced, and exquisite confession, under the pain of a no-remission; but we perswade you for your own good, to be more intimate with, and lesse reserved from those whom God hath set over you for your direction, comfort, salvation.

Case X.

Whether it be lawfull for a man that is not a professed Divine, that is, (as we for distinction are wont to call him) for a laick person, to take upon him to interpret the Scripture.

MAny distinct considerations had need to make way to the answer.

First it is one thing for a man to interpret Scripture, another thing to take upon him the function of preaching

ing the Gospell, which was perhaps in your intention; this is far more large than the other; every man that preacheth, interpreteth the Scripture, but every one that interprets Scripture, doth not preach: To interpret Scripture, is onely to give the sense of a Text; but to preach is to divide the Word ari[illegible]; to apply it to the conscience of the hearer, and in an authoritative way to reprove sin, and denounce judgement against sinners, to lay forth the sweet promises of the Gospell to the faithfull and penitent; for the performing whereof there must be a commission to Gods minister from him that sends him; upon which the Apostle hath pronounced a (τὶς ἱκανὸς) *Who is sufficient for these things?*

Secondly, it must be considered in what nature, and with'n what compass the interpretation is; for doubtlesse, the just degrees of callings must be

be herein duely observed; whether in a publique way, as Pastors of congregations; or in a private way, as masters of families; whether in the schooles, in a meer Grammaticall way; or in the Church, in a predicatory.

Thirdly, it must be considered, as what the calling, so what the gifts are of the interpreter: for surely, meer interpretation doth not depend upon the profession, but upon the faculty of the undertaker: whether he be learned, or ignorant; whether skilfull in languages and arts (which certainly must be required in whosoever would put forth his hand to so holy and great a work) or whether inexpert in both: where these gifts of interpretation, and eminent endowments of learning are found, there can be no reason of restraining them from an exercise so beneficially edificatory to the Church of God:

without

without, which the truth of Christian religion had wanted much both of her vigour, and lustre in all generations. How famously is it known that *Origen* before his entring into holy Orders, even at eighteen years of his age entred into that great work of his Catechisings? *Act.* 18. 24. 25. *Apollos* the Alexandrian was an *eloquent man, and mighty in scriptures, and taught diligently the things of the Lord; yet knew nothing but the Baptisme of John: till Aquila and Priscilla* took him to task, and *more perfectly expounded to him the way of God*, and what happy use it pleased God to make of lai[illegible] hands, for both the defence and propagation of the Gospel, we need no other witnesse then S. *Jerome*, who hath memoriz'd amongst the primitive Christians, *Aristides, Agrippa, Hegesippus, Justin, Musanus, Modestinus*, both the *Apollonii, Heraclius, Maximus*, and

many others, whom God raised up amongst the learned laity of those times, to Apologize for Christianity; And in the last foregoing age, how scarce removed out of our sight, are *Laurentius Valla*, both the Earles of *Mirandula*, *Capnio*, *Fagius*, *Erasmus*, *Faber*, and the rest of those famous way-makers to the succeeding restitution of the evangelicall truth; And what a treasure in this kind had the Church of God lost, if it should have missed the learned annorations upon the scripture, derived to us from the hands of *Mercerus*, *Joseph Scaliger*, *Drusius*, both *Casaubons*, *Tilenus*, *Grotius*, *Heinsius*, *Selden*, and such other expert Philogists, never initiated into sacred Orders?

Fourthly, due and serious consideration must be had of the interpretation it self; that it be genuine, and orthodox: for there can be nothing in the world more dangerous than to mis-

mit-construe God speaking to us in his Word; and to affixe upon his Divine Oracles a sense of our own, quite dissonant from the intention of that spirit of Truth: care therefore must be taken that the interpretation given be every way conform to the Analogy of faith, and fully accordant to other Scripture; the neglect whereof, through either ignorance or misprision hath bred many foul and perilous Solecilmes in Divinity; To give you a taste of too ful a dish: In the 18. of *Ecclesiasticus*, where the Vulgar reads, *He that lives for ever created all things at once*: some, and those no mean ones, of the Ancient, followed also by latter interpreters, have been misled into an ungrounded conceit of an instantany and entire creation of the world, and all the parts thereof, in the first moment of time; whereas the Scripture hath

* *Eccles.* 18. 1. ὁ ζῶν τὰ πάντα κτίσας.

expressly and punctually ser down the severall six dayes, wherein each part of it was distinctly formed: which those misconstruers are fain to understand of the distinct notifications given to the Angels concerning this almighty work: and what curious subtilties have been hereupon raised by our school Divines*, is more fit to be past over with an unpleasing smile, then to be seriously recounted; where as the intention of the place, is onely to signify that God made all things in the universal world that have any being; intimating not the time of creation, but (as our † Version hath it) the Generality of things created.

What advantage the blasphemous Arrians have formerly taken from the mis-interpretation of *Proverbs* 8.22. where Wisdome is brought in

* κοινῇ communiter. Montan.
† *Estii Annotat. in locum.*

(by

(by the miſtaking of ſome ancients) to ſay, * *The Lord created me* (inſtead of *poſſeſſed me*) *in the beginning of his way, before his works of old*, is more worthy of indignation, than any further proſecution. But moſt pregnant and notable is the groſſe miſ-priſon of a late famous School-man, *Franciſcus de Arriba*, Confeſſor to the late Queen mother of *France*, who to maintain that new way of reconciling that ſcholaſtical difference among the Roman Doctors, concerning the effectual aid of Divine Grace depending or not depending upon free will, (about which he had ſixty dayes diſputation with Cardinal *Aſcoly* & Cardinal *Bellarmine*, ſhewing how it might well be maintained without the deviſes of phyſical predeterminations, or that *ſcientia media* of our late Jeſuits) relies chiefly for his opinion upon that Text of † *Eſay*

* Prov. 8. 22. LXX. † Vulg. Tra Eſa. 41. 11.

45.

45. 11. *Hæc dicit Dominus sanctus Israelis qui fecit ventura.* Thus saith the Lord the holy one of Israel who hath made things to come following a mis-edition of the Vulgar which perverts the sense, by making a wrong stop in the sentence, whereas their own *Montanus*, and any other that hath but seen the Hebrew Text, would read it; *Hæc dicit Dominus sanctus Israelis qui fecit eum, Ventura interrogate me:* Thus saith the Lord the holy One of Israel; and his Maker: Ask of me things to come concerning my sons, &c. referring the *venturæ*, (things to come) to the following interrogate. So *Pozas* the late extravagant Doctor of *Spain*, in the maintenance of his novel opinions against Fathers and Councels, pressed against him, stands upon his defence, out of the Synod of *Constantinople*, *Act.* 5. grounded upon the * words of

* *Eccles.* 25 9. Blessed is he that preaches a word unheard of.

mis-

mis-called, *Solomon*; *Beatus qui prædicat verbum in auditum*; corrupting both the Text and the Councel; whereas it should be read *verbum in auditum obedientis*: and the Councel hath it aright, [illegible] as ours turns it likewise, *well is he that speaketh in the eares of them that will hear*: It were easie to fill a just volume with instances of this kind.

To this purpose it will be requisite to make use of all those helps that may enable an interpreter to understand the Scriptures; whether those that are internal in it self; or external from other supplies: of the former kind are a diligent sifting of the context and inference; and a careful comparing and conferring of one Scripture with another, for all truths agree with themselves; & this Word of God is the Sun that gives us light to see it self External; where it will

be needfull to call both for the aid of arts and tongues; and for the testimonies and judgements of reverend antiquity, and the not-to-be-neglected authority of modern Doctors; and thirdly, a due regard of those golden rules of interpreting, which are recommended to posterity by the learned pens of *Clemens* of *Alexandria*, *Hierome*, *Augustine*, *Gerson*, *Hyperius*, *Illyricus*, *Jacobus Matthias*, and others; which, as meet for a volume apart, may not expect to find a roome in so concise a Tractate.

The want and neglect of all which requisites what strange work it must needs make with the simple and unlettered, we may well conceive, when great Clerks have hereupon bewrayed so foul and palpable miscarriage.

Albinus, the learned master of *Charls* the Great, writing upon *John*, finding

finding it said of *Judas*, that having received the Sop, he went immediatly out; * *Et erat nox*, and it was night; puts both together as spoken of *Judas*; He (saith he) was the night that went out; as Christ is the day that gives knowledge to his disciples, that were day too; so *Judas* the night gives knowledge to the Jews that were night, of a traiterous wickednesse, &c.

What work † *Bernard*, (who shewed in this, that he saw not all things) makes of the *Dæmonium meridianum*, the noon-day Devil, in one of his Sermons, is evident to be seen; yet had he been as well seen in language as he was fervent in his devotion; he had spared that discourse as raised from a meer ungrounded interpretation; there being no Devil in the text; but a phantasm of his deluded imagination: And if I should set

* *Erat autem ipse nox.* † Psal. 91. 6. Bern. Ser. 33.

forth the dilcants that our Postillers run upon the names of *Jabs* three daughters, I should seem to you as apt to sport in so serious a subject; and if I could think it worth the labor of gathering up the wilde senses, far fetcht Allegories, absurd inferences, that ignorant Friers have fastned upon Scripture, it is not a small skin that would contain that Tome.

Surely that man, whosoever he be, that would be hoising sail in these deeps of Scripture had need to be well ballast and well tackled, and skilful in the compasse, else he will have much adoe to escape a wrack: He that will walk in paths of danger had need to have his eyes about him; an hoodwinkt man may easily be carried against a post: and he that hath not light enough to see his own way, had need to take heed whom he trusts: He that would blind-fold

follo-

follow those very interpretations which the Church of *Rome* hath commended for authentical, would run into foul and dangerous absurdities. Let me single out some few confessed by their own *Estius* and *Lucas Brugensis*, such as are plainly contradictions to Scripture, and doe, as it were, give the lye to Gods spirit. Such is that 2 *Sam.* 8. 18. *Filii autem David Sacerdotes erant*; *The sonnes of David were Priests*: whereas every child knows that the Scripture frequently tells us, none could be Priests but of *Aarons* order and tribe; out of *Levies* loins; and that *David* was of the house of *Judah*: the *Septuagint* rightly turns it ἀρχιερεῖς*. Again who that shall finde it in the Vulgar interpretation, *David desperabat &c.* *David despaired* that he could escape

* The word in the original is כהנים which every man knows to be used ordinarily to signifie either *Principes*, or *Sacerdotes*, as Exod. 2. 16.

from

from the face of *Saul*; would not inferre that he utterly distrusted Gods assurance by the Prophet of his future Kingdome; whereas the original is by *Estius* his own confession, *Festinabat*, as we also turn it, *David made haste to get away, &c.* 1 *Sam.* 23. 26. He that should finde it reported of one of the sonnes of *Er*, *Qui stare fecit Solem*, (he that made the Sun to stand still) would justly wonder what kinde of man this was, that had been so long obscured from the world, and yet should have done so strange a miracle as never was done but by *Joshua*, (1 *Chron.* 4. 22.) whereas he that looks into the text, shall finde no mention at all of the Sunne; but onely of the meer proper name of *Jochim* the sonne of *Er*.

He that shall read in *Job*, where God speaks of the *Leviathan*, *Cum sublatus fuerit* (i. *Leviathan*) *timebunt Angeli, & terrhi purgabuntur*; when

when he raiſeth up himſelf the Angels ſhall feare, and being terrified ſhall be purged, Job. 41. 25. would ſure think this Whale were the Devill, (as ſome ancients have miſtaken him) and may well wonder how the good Angels (being celeſtial ſpirits) could be capable of feare; or how the evil Angels could be capable of purging; when the text hath no mention, nor thought of * Angels; but onely ſignifying the ſtrength and terribleneſſe of the Whale expreſſes it in theſe words; *When he raiſeth up himſelf the mighty are afraid; by reaſon of breakings they purifie themſelves.* *Solomon* was faulty enough in his Idolatry, but he that ſhall read 1 *Kings* 11. 5. (in the Vulgar Interpretation) that he went after *Chamoſh* the God of the *Moabites* ſhall add one Idol

* Where doubtleſſe [illegible] was miſtaken for [illegible] which title is ſometimes given to the Angels, 1 Kings 11. 5.

more

more to him than we finde him guilty of. *Solomon* was in his holy and regular times, 1 *King.* 4. 32. full of heavenly meditations, and divine ditties: but he that should follow the Vulgar interpretation, would fasten upon him almost * four thousand more than ever he owned.

After that *Merab Sauls* eldest daughter was given away to *Adriel* the *Mehelathite*, 1 *Sam.* 18. 20. contrary to engagement, he that will follow the Vulgar, must say that *David* straight fell in love with *Michal*, the other sister; whereas the text tells us that *Michal* fell in love with him.

He that should finde in the Vulgar construction, that *Saul*† sung all the day naked before *Samuel* in *Naioth*, would think his new prophecying had put him into a merry vein, 1 *Sam.* 19. 24. whereas the text onely tels us

* *Quinque mille* for *mille & quinque*, five thousand for a thousand and five. † *Cecinit* for *Cecinit*

that

that he fell down stripped of his wonted clothes.

He that should finde in the Vulgar, *Psal 71. 5 David* reporting of himself [*Non novi literaturam*] *I know no learning*, would wonder at the Prophets disparagement of his skil, who had elsewhere professed himself wiser than his teachers; whereas all that he sayes, is, * that the mercies and blessings of God upon him have been so many, that he knows not the numbers thereof.

He that should find the seven Angels in the Revelation *Vestitos lapide, clothed with stone*, † *Rev. 15. 6* would sure think them buried; whereas the text is, *clothed in pure white linnen*.

And what doe you imagine would a plain reader think of that charge of the wise man; *Noli velle mentiri*

* The word is [illegible] † Rev. 15. 6 λάθον ἔσω χρῶνα. Suid ἐνδεδυμένοι λίνον, Rev. 15. 6.

omne

omne mendacium; *Be not willing to lie all manner of lies*, *Ecclus.* 7. would he not straight say; some belike I am allowed to lye? whereas the words are peremptory even in *Estius* his reading, according to ours; *Use not to make any manner of lies.*

Yea that very correction of the Vulgar interpretation which *Bragensis* allows and magnifies, 1 *Cor.* 15. 51. with what safety can it passe the judicious, whiles he reads; *Omnes quidem resurgemus, sed non omnes immutabimur*; *We shall all rise again, but we shall not all be changed*: For how can those rise again, that never died? how are those capable of a resurrection, which are onely changed? Whereas the just sense runnes according to our * Version, *We shall not all sleep, but we shall all be changed.* For those that are found alive at our Saviours second comming shall not sleep

* ὑ pro οὐ.

in

in death; yet both they and the formerly dead must undergoe a change.

I could utterly weary you with instances; How must he that reads the Apocryphal *Ecclesiasticus*, needs say that this man (how obscure soever in his authority) saw more and clearer than all the acknowledged Prophets of the Old Testament, for he hath foretold us expresly the very name of our Lord Jesus which none of them ever before hand published: For he (*Eccles.* 43. 23.) speaking of the deep sea, is read in the Vulgar to say, *Plantavit illum Dominus Jesus*: *The Lord Jesus planted it*: I shame to think what sport a Jew will make of such a grosse mistaking; wherein now Jesus is mis-read, for *new Islands*; so as the right sense is only this; *God by his counsell appeaseth the deep, and planteth the Islands therein*; But I forbear, only if you have too much leisure, you may be pleased

sed to call your eye upon the Margin.

Neh. 2. 2. *Percussimus sedum in vitulo, in campestra* for, *In vitulo, in campis, Oso. Anas nostri sicut aranea meditabantur*, Psal. 90. 9. for, as a tale that is told: *Cantus, si cessus spadonis desiderabit Jerusalem*, Eccl. 20. 4. *Super* for *subter*. Gen. 3. 8. *Vulnera* for *ulcera*, Exod. 9. 9. *Distinctum* for *distinctum*, Exod. 49. 28. *Sanctuarii* for *sancto arii*, Levit. 6. 18. *Deos* for *Dei*, Levit. 21. 14. *Negre* for *atque*, Levit. 25. 21. *Solis* for *sola*, Deut. 19. 23. *Non sacris*, for *sacris*. Joh. 2. 18. *Occidentalium*, for *Orientalium*, Jud. 12. 3. *Hamath* for *Sammata*. 1 Sam. 17. 2. *Pagi habitabuntur* for *pagi habitabantur*. 2 Sam. 27. 8. *Judam* for *Ludam*. 2 Sam. 6. 20. *Tumultum* for *tumultum*. 2 Sam. 18. 29. *Lapidi febili*. for *Sagitali*. Prov. 17. 11. *Adulis* for *Adulis*. Prov. 26. 4. *Sopata* for *Precosa*. Cant. 2. 13. *Adulteri* for *adulta* Ecclus. 41. 9. *Infidelem* for *filiam*, Esa. 17. 10. *Tabernis* for *Tiranni*. *Terra* for *ter*, Ecclus. 48. 23. *Ob urdui* for *obsurdui*, Esa. 33. 19. *Imprudentum* for *imprudentem*. Esa. 33. 19. *Fauna fecaris* for *fauris ficarie*, Esa. 50. 39. *Pindos* for *stellas*. Ezek. 21. 13. *Exitus* for *mucro*. Mat. 9. 18. *Angelus* for *Angelus*, Zach. 10. 4. *Servivit* for *servavit*, Osee. 12. 12. *Confessus* for *confusus*, Mat. 8. 18. *Sexta* for *vertia*, Mat. 25. 25. *Alienum* for *Medica*, Acts 28. 1. *Compellebantur* for *compellebantur*, Luk. 8. 23. *Placuerunt* for *Luxerunt*, Heb. 13. 2. *Addixisti* for *addixisti*, Jac. 5. 6. *In carne* for *in carcere*. 1 Pet. 3. 19. *Appropinquabit* for *appropinquavit*. 1 Pet. 4. 7. *Tubarum* for *turbarum*, Rev. 19. 1. *Deique Chaldæorum* for *de ur Chaldæorum*, Nehem. 9. 7.

In

In these and many more (for I meant to give you but an assay) the mistakes are important, and such as make no small change in the Text; which I have therefore produced that I might let you see how easie it is for a man that takes all things upon trust to be abused by his credulity; and how unsafe it is much more for an unexpert and injudicious person to meddle with the holy Oracles of the Almighty.

The conclusion then must be, that however it may be lawful for the eminently learned, either in Schools or Families, (according as their calling may warrant them) to interpret even difficult Scriptures, and to untie the knots of a Text; yet since not many are thus qualified, and those that are so qualified, if they neglect to follow the prescribed rules, may easily miscarry, to the great peril both of their owns souls, and others;

I

I should therefore advise that this may be the act of but some few choice persons, and of them, with all possible caution: and that ordinary Christians, if they have a desire, besides all fundamental truths (which are laid down openly and clearly in the sacred Word of God) to inform themselves in those darker verities, which lie hidden in more obscure Scriptures) to have recourse to their learned and faithful Pastors; and rather to rest in that light which they shall receive from their well digested instructions, then to relie upon their own (perhaps confident, but much weaker) judgement.

RESO-

RESOLUTIONS.

The fourth Decade.

Cases Matrimoniall.

CASE I.

Whether the marriage of a Sonne or Daughter without or against the Parents consent may be accounted lawfull

MAtrimony, though not a Sacrament, yet a sacred institution of God for the comfort and propagation of mankind; is so fruitfull of questions as that* *Sanchez* the Jesuit hath stuffed

* Thom. Sanchez Societ. Jes. Theol. *De matrim.*

an

an huge volume with them alone: it were pitty that so many should in that estate be necessary; we meddle not with those secret, and (some of them) immodest curiosities: contenting our selves only with those which meet us every day in the ordinary practise of men: whereof this which you have moved may well challenge the first place: A question wherein I was vehemently pressed in my late western charge, by some persons of greatest eminency in those parts upon occasion of some of their children undutifully carving for themselves in the choice of their matches; The offended parents in the height of their displeasure were very earnest to invalidate, and annual the mariage: I gave them in effect the same account of the point, which now I give to you: That this disallowed marriage was one of those things which are unjust and unlawfull to be done,

done, but being once done are valid.

How unwarrantable and injurious it is in the child to match himself without or against the parents consent, there needs no other Judg then the law of nature it self, which teacheth us that the child is no other then the peculier goods, and living substance of the parent; yea, as some Civilians have taught us to expresse it, he is * *pars visceruum matris*, a part of the mothers bowels; and part of the purest substance of the father; and therefore ought no more to be exempted from the parents power of disposing, then the very limbs of his own body; upon this ground it was, that by the law of God it was lawfull for the † Jewes, in case of extremity, to sell as themselves, so their children also to servitude, but to those onely of their own nation;

* Jaco Leonissa Consil. Matrimon. 49 † Exod. 21. 7. Deut. 15. 12. 13.

and

and in the * law civil there is the like permission, although under certain conditions; and particularly in an utter exigency, *Vitium causæ*. To the latter whereof, some † Expositors hold so strictly, as that they will not admit this to be don for the redemption of the parent from death, or perpetuall bondage; but onely to preserve him from affamishing: wherein certainly they are over-strait laced, and too much wedded to syllables; it being questionless the intention of the law to comprehend all equally pressing necessities; to which they add that this must be onely in the fathers power, and that to a child not emancipated, and left to his own disposing: It is not in my way to dispute the case with them. take it at the easiest, it sufficiently shewes the great power that Nature it self yeelds

* L. 2. c. *De Patribus qui &c.* † Covarruv. l. 3. var. c. 14. ex Accursio & aliis. Lel. 2. c. 5. Dub. 4.

to

to the Parent over the child; By how much ſtronger then the Parents intereſt is in the child, ſo much more wrongfull it muſt needs be in the child to neglect his Parents in finally beſtowing himſelf; And if we look into the poſitive law of † God, we ſhall finde the child ſo wholly left to the Parents will and diſpoſition, as that he may, at his pleaſure, diſpenſe with, or fruſtrate the vow of his child made to God himſelf.

Neither doe the * Roman doctors generally hold otherwiſe this day in caſe of an under-age; and ſome of them extend this power yet further; yet not without a diſtinction: holding, that after the age of puberty, thoſe vows onely are in the mercy of the father, which may be prejudicial to the government of the family, and paternal power; which is ſufficient for my purpoſe in the queſtion in hand.

† Num. 30. 3, 4, 5, 6. * Leſſ. de Jure L. 2. c. 40. dub. 14.

And although those Casuists doe sufficiently dote upon their * Monkery, and the vows thereunto appertaining, yet they ascribe so much to the bond of filial duty, as that they teach, That a sonne which (his parents being in extreme need, and wanting his help) enters into a religious order; or comes not out of it (though professed) when he might be likely by his coming forth to be aidfull to his said Parents, is guilty of a sin against the fifth Commandement: so as even with them, the respect to a Parent ought to over-weigh a vow of Religion; although consummate by a solemn profession.

But, that you may not object to me the age of the Law, as therefore abrogated because Mosa calls, hear what the chosen vessel saies under the new Law of the Gospel.

* Navar. enchir. c. 17. n. 14. *Filius qui Parentibus in extrema necessitate constitutis &c.*

If

If any man think that he behaveth himself uncomely towards his virgin if she passe the flowre of her age, and need so require, let him doe what he will; he sinneth not, let her marry: (1 Cor. 7. 36.) *Nevertheless he that standeth stedfast in his heart, having no necessity; but hath power over his own will, and hath so decreed in his heart that he will keep his virgin, doth well, &c.* (vers. 37.) Loe, the Apostle supposeth it in the Parents power either to keep his daughter a virgin, or to dispose of her in marriage: she is not her own, either to hold, or give; but must be altogether ordered by the superiour will of a Parent: Not, that any force is allowed either way, to be used towards the daughter; whether to continue her in a constrained virginity, or to cast her against her minde upon a dis-affected match; No, that God who disposeth all things sweetly, would have us

doe so too; he allows Parents to be rulers of their children, but not tyrants: what they doe therefore in this kinde, must be more by counsail, than command: and with more sway of love, than authority: thus, consulting wisely with the state of times, and the childs disposition, and abilities of containing, must the Parent either keep his virgin, or labour for the provision of a meet comfortship: Thus did the two great Patriarchs of Gods ancient Church, *Abraham* and *Isaac*, provide fit matches for their holy seed; whiles the unholy provided unfit matches for themselves: Thus did their godly issue in all generations take their Parents along with them in the choice of meet yoke-fellows, whiles the godlesse, whether out of impetuous lust or stubborn disobedience, affect with *Esau*, *Gen.* 28. 6, 7, 8. to be their own purveyours, to the great regret, and heart

heart-breaking of their parents.

Lastly, the latitude that S. *Paul* gives of the liberty of marriage to all Christians is, *Tantùm in Domino*; *onely in the Lord*; 1 Cor. 7. 39. Now how can that marriage be in the Lord, which is against him? and how can that be other than against the Lord, which is against the Lords commandement? And what commandment can be more expresse than *Honour thy Father and thy Mother*, Eph. 6. 1. And, *Children obey your Parents*, Col. 3. 20. And what can be more contrary to the honour and obedience due to Parents, than to neglect them in the main businesse that concerns our lives? And what businesse can concern our life so much, as the choice of a meet partner, with whom we may comfortably wear out all the dayes of our pilgrimage on earth?

Doubtlesse then, we may in a ge-

nerality safely conclude, that it is altogether unlawfull for a childe to sleight his Parents consent in the choice of his marriage; There may be some particular cases incident, wherein perhaps this may without sinn: or blame be forborn; as when the child either by generall permission, or former elocation shall be out of the Parents disposing, or where the parent is defective in his Intellectuals, or where the child lives in remote, out of the compasse of intelligence; or where the Parent being averse from the true Religion denies his consent to match with any but those of his own strain, or shall upon other by-occations willfully stand upon so unreasonable terms, that neither friends nor authority can overrule him; But where these or the like preponderating exceptions do not intervene, the child cannot without sin balk the Parents consent to his choice in marriage.

But

But though such marriages without, or against consent, be not lawfully made; yet being once made, they are valid. * The civil law, out of the grounds of policy, goes herein too far, which sentenceth those marriages void, which are made without the consent of Parents, or Guardians; but as Matrimony hath something in it of Nature, something of Civility, something of Divinity, as instituted by God, and by him to be regulated; so sure this last interest ought to over-sway the other two; The marriage therefore thus made, being though faulty yet true, is doubtless after consummation indissoluble. The parties repentance, and the parents sorrow may have leisure to afflict them, no power to relieve them.

* *Matrimonia esse irrita, &c.* Instit. de nuptiis, & ff. de jure nuptiarum. Ita & Evarist. in constit. edita. Anno C. 100

Case II.

Whether Marriage lawfully made may admit of any cause of divorce, save onely for the violation of the marriage bed by fornication or adultery.

OUr Saviour hath so punctually decided the case in his Divine Sermon upon the mount, that I cannot but wonder at the boldnesse of any man, who calls himself a Christian, that dares raise a question after so cleer and full a determination from the mouth of Truth it self.

Whosoever (saith he) *shall put away his wife, saving for the cause of fornication, causeth her to commit adultery; and whosoever shall marry her that is divorced, committeth adultery*, Mat. 5. 32. Yet I finde this so evident an assertion checked by two sorts of adversaries; The one, certain wild Novellists,

 vellists,

vellists, who admit of very sleight causes of separation, the other, Romish Doctors, who plead for some other main and important additions to this liberty of divorces.

I have heard too much of, and once law, a licencious Pamphlet thrown abroad in these lawless times, in the defence, and incouragement of Divorces (not to be fued out, that solemnity needed not, but) to be arbitrarily given by the disliking husband, to his displeasing and unquiet wife; upon this ground principally, that Marriage was instituted for the help and comfort of man; where therefore the match proves such, as that the wife doth but pull down aside, and by her innate pervishness, and either sullen, or perish and froward disposition brings rather discomfort to her husband, the end of Marriage being hereby frustrate, why should it not, saith he, be in the Hus-

bands power (after some unprevailing means of reclamation attempted) to procure his own peace by casting off this clogge, and to provide for his own peace and contentment in a fitter March?

Woe is me! To what a passe is the world come that a Christian pretending to Reformation should dare to tender so loose a project to the publique? I must seriously protest when I first did cast my eye upon the front of the book, I supposed some great wit ment to try his skill in the maintenance of this so wild, and improbable a paradox; but ere I could have run over some of those too-well penned pages, I found the Author was in earnest, and meant seriously to contribute this peece of good counsail in way of Reformation to the wise and seasonable care of superiors: I cannot but blush for our age, wherein to bo'd a motion hath been, amongst

mongst others, admitted to the light; what will all the Christian Churches through the world, to whose notice those lines shall come, think of our wofull degeneration in these deplored times, that so uncouth a design should be set on foot amongst us?

Or how can they consume it other, then a direct contradiction to our Saviours sentence, in maintaining that practise, which he expressly professeth to oppose? for, what was the Jewish guise here checked by our Saviour, but a voluntary repudiation of a lawfull wife upon the termes of dislike, other than fornication? The mis-interpretation of the Law alluded unto, argues no lesse; The law alluded unto is, that of *Deuteronomy*, where God sayes, *When a man hath taken a wife, and hath been her husband, and it shall be, that she finde not grace in his eyes, because he hath found*

found in * her matter of nakednesse, he shall write her a bill of divorcement, and send her away, Deut. 24. 1. whereupon he inters with an, Ego dico, I say unto you: Whosoever shall put away his wife (saving for fornication) causeth her to commit adultery: the matter of nakednes therefore for which the Jewes were then wont to divorce their wives, (and offended in so divorcing them) was any other displeasing quality, besides the breach of wedlock through bodily uncleanlinesse, for which only had they dismissed their wives, our Saviour had neither faulted their Glosse nor their Practise, so as herein Christ the giver of the Law, decides one of those great controversies, which were agitated between the emulous schools of *Sammay*, and *Hillel*: determining on *Sammai's* side, that for no other nakednes but that of adultery it was

* ערות דבר

law-

lawful to divorce a wife: and flatly condemning by the like answer that [κατὰ πᾶσαν αἰτίαν] (Mat. 19. 3.) every cause of repudiation then ordinarily received; as it was by the Pharisee purposly propounded unto him.

Answerable whereunto is that of the Prophet *Malachi*, who (in our just reading) hath so fully decided the cause, as it had been expressly referred to his umpirage: *The Lord* (saith he) *hath been witnesse between thee, and the wife of thy youth, against whom thou hast dealt treacherously: Yet is she thy companion, and the wife of thy covenant.* Mal. 2. 14. 15. 16. (Loe, the wife of thy covenant; therefore too sure settled to be turn'd off upon every sleight occasion; what? was thy covenant to take her for thy wife till thou should'st dislike her? what were this but to mock God, & the world? thy covenant implies no lesse than firmitude, and perpetuity.)

There-

Therefore take heed to your spirit, and let none deal treacherously against the wife of his youth: For the Lord the God of Israel saith that he hateth putting away, For one covereth violence with his garment saith the Lord of hosts: Therefore take heed to your spirit that you deal not treacherously. What is this treachery, which the Prophet cryes out against, thus vehemently thrice over, with a breath, but pretended and unjust suggestions against a lawfull wife for her undue divorce? and what is that violence, but the injurious execution of those suggestions? upon which unsufficient grounds the Lord professes to hate putting away.

Yea how apparently contrary is this practise to the very originall institution of marriage it self, He that made it in paradise ordained thus: *Therefore shall a man leave his father and his mother and shall cleave unto his wife;*

wife, and they two shall be one flesh. Gen. 2. 24. Loe before ever there was father or mother, or son in the world, God hath appointed that the bond betwixt husband and wife shall be more strait and indissoluble than betwixt the parent and child; and can any man be so unreasonable as to defend it lawfull, upon some unkinde usages, or thwartnesse of disposition, for a parent to abandon and forsake his child; or the son to cast off his parent? much lesse therefore may it be thus betwixt a husband and wife; *they two are one flesh.* Behold here an union of Gods making! A mans body is not more his own, then his wives body is his. And will a man be content to part easily with a peece of himself? Or can we think that God will endure an union made by himself to be so slightly dissolved? Or how is this bodily matrimony a lively image of the spiritual marriage

age betwixt Christ and his Church (who hath said, *I will betroth thee unto me for ever, Yea I will betroth thee unto me in righteousnesse, and in judgement, and in loving kindnesse, and in mercies, Hos.* 2. 19.) if upon final occasions it may be subject to utter dissolution? Yea, what speak I of Divinity? Even modest Heathens would hiss this Libertinisme off the stage: Amongst the rest, what a fool was *Socrates*? The Oracle, belike, called him the wisest man of his time; but what a fool was he to indure the unquiet clack of his *Xantippe* with such cool patience, if he might have quit himself of the trouble with a bodin act of her dismission? Or what use was there of those Delegates of *Athens* and the *Harmosyni* of *Lacedæmon* for the precing up of these domestick breaches betwixt husband and wife if the imperious husband had power to right himself by

by turning the scold out of dores?

Lastly, what silly counsail was that which the Jewish Rabbi gave to his client, matcht with a shrew; *The bone that is falne to thy lot, that doe thou gnaw upon*; if it were altogether free for him to leave that bone, and take another?

But I have dwelt too long on so grosse a subject: There may yet seem some better color for the plea of the Romish doctors which admit infidelity and heresie into the rank of those causes which may warrant a divorce: But herein the ambiguity of the word (if heed be not taken) may deceive you; The * Hebrew text, to which our Saviour alludes, uses a word which signifies excision, or cutting off; The Greek, a departing away, or putting off; The Latine, *Divortium*, in his true sense is not so hainous as either of the other; signi-

* *Deut.* 24. 1. ἐστιν βιβλίον ἀποστασίου.

fying

tying rather a turning aside, but in our ordinary acception amounts to no lesse than both. But what unjust difference they make betwixt final separation and dissolution, we shall finde in our next discourse. Onwards, that such separation may not be made of man and wife (lawfully joyned together) for heresie, or misbeliefe, we need no other conviction than that peremptory and cleer determination of our Saviour which we have formerly insisted on. For though his words on the mount were in a way of doctrinal assertion, yet afterwards, the same words were used by him, in way of a satisfactory answer to the Pharisees question concerning causes of divorce, professedly resolving that there could be no allowable ground of such separation except fornication. What words can be more plain? It is but a shift to say (as the Cardinal doth) that our Saviour

viour here meant only to expreſs the proper cauſe of the ſeparation of married perſons, which is the breach of marriage faith: as having no occaſion to ſpeak of thoſe general grounds which reach to the juſt ſundring of all humane ſocieties, ſuch as Hereſie and Infidelity, which are enough to unglew all natural and civil relations, between father and ſon, maſter and ſervant, husband and wife. For it is clear that neither queſtion nor anſwer were bounded with any particularities. The Phariſee asks, *Whether for every cauſe*; Our Saviour anſwers; *For no cauſe but fornication*. And it is ſpoken beſide the book, that child or ſervant ſhould or may forſake parent or maſter in caſe of Hereſie, or Infidelity: S. *Paul* teacheth other Doctrin: *Let as many ſervants as are under the yoke* (of bondage) *count their* (infidel) *maſters worthy of all honor*; 1 *Tim.* 6. 1. not worthy

thy

thy therefore of desertion, & disclamation: And if the servant may not shake off the bonds of duty, much lesse may the same break or slie off the bonds of nature; and as for the matrimonial knot, how too sure it is to be loosed by infidelity it self, let the Apostle speak; *If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away*, 1 Cor. 7. 12. *And the woman which hath an husband that believeth not; and if he be pleased to dwell with her, let her not leave him*, ver. 13. And if even Infidelity have not power to dis-oblige the wife or husband, much lesse, Heresie. In this pretended case therefore to separate from board and bed, is no better than a presumptuous insolence; It is the peremptory charge of Christ, *What God hath joyned together, let not man put asunder*, Mat. 19. 6. In all lawful marriages, it is God that joyns the hands

hands and hearts of the Married. How dare man then undoe the work of God upon devises of his own? Had the Lord ever said, If thy wife be a wilfull misbeliever, rid thy hands of her; this separation were just; but now that his charge is clean contrary, what an impious lavcinesse is it to disjoyn those whom God hath united?

As therefore it is not in the power of any third person, upon any whatsoever pretence, violently to break the sacred bond of Marriage; so neither may the husband, or wife, enthrall each other by a wilfull desertion; whether upon pretext of Religion, or any secular occasion; In which case what is to be done must come under a further disquisition. Certainly it was never the intention of the holy and wise God, by vertue of that which was ordained for mans comfort and remedy of sin, to bind him

him to a remediless misery; which must necessarily fall out, if upon the departure of an unbeleeving, or hereticall yoke-fellow, the relict party must be tyed up to a perpetual necessity of either containing, (if he can) or, if he can not, of burning; The wise Doctor of the Gentiles well fore-saw the dangerous inconvenience that must needs hereupon ensue, and hath given order for prevention, accordingly.

But if the unbeleeving depart, let him depart; *A brother, or a sister, is not under bondage in such cases; but God hath called us to peace,* 1 Cor. 7. 15. Not, that it is free for a man or woman so forsaken, to carve him, or her-self of redresse (what an infinite confusion would follow upon such licentiousness?) but that after long and patient expectation, and all probable means used for the reduction of the party deserting; recourse be had (as to the last

last refuge) to publique Ecclesiastical authority (which is the fittest to manage these matrimonial affairs, in whose power it may be, either by grave admonitions, and just censures to bring back the offendor to his duty; or upon his continuing contempt, to set a day for the publication of the just freedome of the forsaken: wherein they shall doe no other than execute that Apostolike sentence for exemption from an unjust bondage, and providing for a just peace.

Case III.

Whether after a lawfull Divorce for Adultery, the innocent party may marry again.

Although Matrimony be not, according to the Romish tenet, one of those Sacraments which imprint an indeleble character in the receiver;

receiver, yet it hath, as they hold, such a secret influence upon the soul, as that it leaves a perpetual bond behind it, never to be dissolved till death; So as those offendors, which by just censure are separated from the board and the bed, cannot yet be freed from the bond of marriage: upon this ground it is that they barre the innocent party from the benefit of a second marriage, as supposing the obligation of the former, still in force. In the ordinary Bills of the Jewish divorce, the repudiated wife had full scope given her of a second choice; as the words ran: "*She was to be free, and to have power over her own soul; to goe away; to be married to any man whom she would.*" They were not more liberal, than our Romish divorcers are niggardly: The Jewish divorce being upon unwarrantable cause, made their liberality

† Maimon. Treat. of Divorce.

so

so much more sinfull, as their divorce was more unjust: for the divorced woman was still in right the lawfull wife of that unrighteous husband that dismissed her; the Romish doctrine makes their strait-handedness so much more injurious, as the cause of separation is more just.

Even this question also is expressly determined by our Saviour in his answer to the Pharisee: *Whosoever shall put away his wife, except it be for fornication, and marrieth another, committeth adultery*, Matth. 19. 9. when, he that for so just a cause as fornication putteth away his wife and marrieth another, committeth not adultery: the exception manifestly implies so much, both in reason and common use: neither indeed, are the words capable of any other probable sense: That which *Bellarmine* would fasten upon it, referring the exception to the former clause of

dismission onely, so as it might be lawfull to divorce onely for fornication, but not to marry after divorce; cannot stand without a supply of words of his own, which God never allow'd him to interfert; and besides utterly destroies the sense; casting such a doctrine upon our Saviour, as he would hate to own; for except that restraint be referred to the marrying again, the sense would run thus, *whosoever puts away his wife commits adultery*; which stands not with truth or reason: sith it is not the dismission that is adulterous, but the marriage of another: It is therefore the plain drift of our Saviour, to teach the Pharisee, that the marriage of a second wife (after dismission of a former, upon any other cause except for fornication) is no lesse than adultery: thereby enforcing, that upon a just dismission for fornication, a second marriage cannot be branded with adultery.

Neither

Neither will it serve his turn, which he would borrow from *S. Augustine*, that upon this negative of our Saviours, we may not look to build an affirmative of our own; for though it be granted, that he, who putting away his wife not for fornication, and marrieth another, sinneth; yet it follows not that he who having dismissed his wife for fornication, marrieth another, sinneth nor at all: A sinne it may be, though not an adultery: For surely if it be a sinne, it must be against a Commandement, and if against any Commandement, it must be against the seventh; and what is the seventh Commandement, but *Thou shalt not commit adultery?* Besides, the Pharisees question [*Is it lawfull for a man to put away his wife for every cause?*] was not without a plain implication of liberty to marry another; which our Saviour well knowing, gives a full answer as well

to what he meant, as what he said; which had not been perfectly satisfactory, if he had onely determined that one part concerning dismission, and not the other concerning marriage; which clause if two other Evangelists expresse not, yet it must be fetcht necessarily, from the third; since it is a sure and irrefragable rule, *That all four Evangelists make up one perfect Gospel.* It is therefore a very tottering and unsure ground which our Rhemists build upon; as if the Apostle meant to crosse his Lord, and master, when he saith, *The woman which hath an husband is bound by the law to her husband, so long as he liveth, Rom. 7. 2.* therefore onely death can dissolve the bond of marriage; not divorce, not adultery, not divorce for adultery: For how plainly doe the words carry their answer in themselves: * *The woman* (saith the

* So also 1 Cor. 7 39

Apostle)

Apostle) *that hath an husband*: but the woman legally divorced for fornication, hath no husband: S. *Paul* speaks of a true wife, not a divorced harlot: He had no occasion here to look aside at matter of divorce, but takes marriage as in its entire right; rather desiring to urge (for clearing the case of our obligation to the law) that the husband being once dead, the wife is free to marry again, than to intimate the case of her incapacity to marry till he be dead.

As for that bond therefore, which is so much stood upon, if it be taken without all relations to the duties of bed, and board; it is meerly Chimerical; nothing but fantasie. There are, or should be Bonds of affection; Bonds of mutual respects, and reciprocal duties betwixt man and wife; and these must hold firm notwithstanding any local separation; neither time, nor place may so much

as slacken, much lesse loose them: but, where a just divorce intervenes, these bonds are chopt in pieces, and no more are, than if they had never been: And if all relations cease in death, (as they doe, in whatsoever kind) surely divorce, being (as it is) no other than a legal death, doth utterly cut off (as the Hebrew term imports) all former obligations and respects betwixt the parties so finally separated.

The adulterous wife therefore duly divorced being thus dead in law as to her husband, the husband stands now as free as if he had never married: so as I know not why the Apostle should not as well speak to him as any other, when he saith, *Nevertheless to avoid fornication, let every man have his own wife*, 1 *Cor.* 7. 2. Neither is it otherwise in the case of a chaste wife after her separation from an adulterous husband, *Mat.* 19. 12. In these

these rights God makes no difference of sexes; both may lawfully claim the same immunities; which certainly should they be denied to either must needs draw on very great inconveniences. For in how hard a condition should the innocent party be hereupon left? Either the husband, or wife must be forced to live with an adulterous consort, or be eyed to a perpetual necessity of either doing that (which perhaps they cannot doe) containing; or of suffering that which they ought not to endure, burning.

What remedy now can be expected of so great a mischief? Our Romish Doctors purpose two, Reconciliation, or Continence. Both good, where they may be had; Reconciliation, in case of a seasonable and submisse repentance. That which is the Apostles charge in case of desertion, holds here also, [μενετω ἀγαμος] let her

be reconciled; the more heinous the wrong is, the more commendable is the remission.

Continence, after such separation, in case of ability so granted: for surely this holy disposition is a gift, and therefore is not had, where it is not bestowed; those that place it in our power, derogate from the thanks of the giver: yea, he that gives it tells us, *all cannot receive it*: *Mat.* 19. 11. he must not only give it, but give us power to take it.

But where the offending party is obstinately vicious; and the innocent (after all indeavours) unable to contain, without a supply of Marriage, the case is remediless, and we know Gods mercy such, as that he leaves no man for matter of resolution utterly perplexed.

Shortly then, I doubt not but I may (notwithstanding great authorities to the contrary) safely resolve, that

that in the case of divorce it is lawful for the innocent person to marry; But for that I finde the * Church of *England* hitherto somewhat tender in the point, and this practice, where it rarely falls, generally held, though not sinfull, yet of ill report, and obnoxious to various censures: I should therefore earnestly advise, and exhort those whom it may concern, carefully, and effectually to apply themselves to the fore-mentioned remedies: Reconciliation if it be possible, to prevent a divorce; Holy indeavours of a continued continence, (if it may be obtained) to prevent a second marriage after divorce: But if these prevail not, I dare not lay a load upon any mans conscience which God hath not burdened, I dare not ensnare those whom God will have free.

* Decreeing to take bonds of the persons divorced to remain single. Can. & Constit. c. 107.

Case IV.

Whether the authority of a Father may reach so farre as to command or compell the Childe to dispose of himself in Marriage where he shall appoint.

THe extent of a paternall power, as we have partly shewed already, hath been wont to be very large, reaching in some cases by the Civill law to the life of the Child, and by the Jewish law, to his liberty: so as it might seem much more over-ruling in case of Marriage; which also seemes to be intimated by the Apostle in that he suppoſes, and gives a power to the parent either *to give or keep his virgin*: And how apt parents are to make use of this awfull authority in matching their children for their own worldly advantage, contrary to their affections and disposition,

poſition, we have too lamentable experience every day; neither is it eaſie to ſet forth the miſchievous effects that have followed upon thoſe compelled marriages: for hence enſue perpetual diſcontentments to the parties ſo forcedly conjoyned, an utter fruſtration of the end of marriage, which ſhould be mutuall comfort; and not ſeldome, dangerous machinations againſt the life of the diſaffected conſort; as it were too eaſie to inſtance every where; but eſpecially, if the affections of the young couple have been before (as it oft falls out) placed elſewhere; what ſecret heart-burnings; what loathing of conjugall ſociety; what adulterous plottings doe ſtraight follow; what unkind defiances paſſe between them? how doe they wear out their dayes in a melancholick pining, and with each other, and themſelves dead too ſoon? Yea herein an imperious or covetous parent

parent may be most injurious to himself, in robbing himself of that comfort which he might receive from a dutifull child in her person, in her posterity: For the avoiding of which mischiefs it were meet and happy, that both parent and child could both know their limits, which God, and nature hath set, and keep them.

Let the child then know that he is his parents; that as he was once a part of them in respect of his natural being, so he should be still in his affections and obsequiousnesse, and therefore that he ought to labour by all means to bring his heart unto a conformity to his parents will and desire, according to that universal rule of the Apostle, *Children obey your parents in all things; for this is well pleasing unto the Lord*, Colos. 3. 20. The word is comprehensive, *In all things*. Things unlawfull passe for unpossible; we onely can doe, what we ought;

If

In all those things then which are honest, lawfull, just, parents must be obeyed: And the motions for marriage being such, impose upon the child so farre a duty of obedience as that he is bound to work his affections what he may, to a compliance with his parents will: the wilfull neglect whereof is no better than a kind of domestique rebellion.

Let the parent again consider, that the child, however derived from his Loins, is now an intire person in himself; that though the body came from him, yet the soul was from above; that the soul of his child is endowed with powers and faculties of its own; that as he is not animated by his parents spirits, so he is not inwardly swayed by his parents will or affections; that when his reason comes to be improved, there may be differences of judgement betwixt his parents and him; and from thence may arise

arise a diversity or contrariety of affections and desires; and these affections and passions may grow to such strength as that he himself shall not be able to master them; and if the parent feeli himself subject to such infirmities, well may he be induced to pity those whom a vigorous heat of youth hath rendred more headstrong and unruly; withall, let him consider that though the child should be advised by the parent, yet it is fit that he should like for himself; that the will is to be led, not driven; that no marriage can be happy, but that which is grounded in love; that love is so altogether voluntary, that it cannot consist with constraint.

Lastly, let him know that the power of the father, though great, yet is not unlimited. It is the charge which the father of mercies hath laid upon all earthly fathers, in their carriage towards their children; *Fathers, provoke*

voke not your children to wrath, (or (as the * Vulgar reads it) *to indignation*,) *least they be discouraged*: and surely, if there be any thing, wherein the passion of the child may be like to be inordinately stirred, it is in the crossing of an once-well-setled affection; and diverting the stream of love into another channell; For the avoiding whereof, the Imperiall lawes have been so indulgent to the child, as that (according to their best glosses) they permit not the father to disinherit the daughter for choosing an husband, not unworthy of her self, though against her fathers minde; yea some of them have gon a step further: but I forbear: How far it may be lawfull, and fit for the parent to punish the disrespect of a child, in so important a case, is not for me to determine; doubtlesse where the provision

* Μὴ παροργίζετε, Eph. 6. 4. Μὴ ἐρεθίζετε, Colos. 3. 2.

is arbitrary, the Parent will be apt so to manage it, as to make the child sensible of a disobedience, so as both parts herein suffer, and are put into a way of late repentance.

Briefly therefore, on the one side the Son or Daughter doe justly offend, if without cause, or wilfully they refuse the Parents choice, and are in duty bound to work their hearts to an obedient subjection to those unto whom they owe themselves; and for this cause must be wary in suffering their affections, to over-runne their own reason, and their parents guidance, either suppressing the first motions of unruly passions, or if they grow impetuous, venting them betimes to the tender eares of their indulgent Parents, or discreet and faithfull Friends, that so they may seasonably prevent their own misery, and their Parents grief. On the other side the Parent shall offend,

send, if holding too hard an hand over the fruit of his own body, he shall resolve violently to force the Childs affections to his own bent, and where he finds them set, will rather break than bow them; not caring so much to perswade as to compel love. These harshnesses have too much of the Tyrant in them, to be incident into a Christian Parent; who must transact all these matrimonial affairs in a smooth and plausible way of consent, and indulgence. A noble & ancient pattern whereof we find in the contract betwixt *Isaac* and his *Rebecca*, *Gen.* 24. 49, 50, 51, 52, &c. the match was treated on betwixt *Abrahams* proxie, and the maids father *Bethuel*, and her brother *Laban*: The circumstances drew their full consent; all is agreed upon betwixt Parents; but when all this is done, nothing is done, till *Rebecca* have given her assent; they said, *We will call the damsell, and inquire at her mouth*

mouth, ver. 57. And they called Rebecca, and said unto her, Wilt thou go with this man? And she said, I will go, ver. 58. Now the contract is made up; till then, all the engagements of *Bethuel* and *Laban* were but complements; Till then, all the rich Jewels of Gold and Silver given to the intended Bride, and all the precious things given to her mother, and brother, were but at the mercy of the receivers; Neither ought it to be other in all Christian espousals; the free and cheerfull consents of Parents and parties makes the match both full, and happy; Let not the Childe dare to crosse his Parents, let not the Parent think to force the Child; and when an undue bargain is, through the heat of passion, made up past reclamation, let love and pity so far intercede for the offenders, that they may smart for their rashness and neglect, without their utter undoing.

CASE

Case V.

Whether the marriage of Cousens-Germans, that is, of Brothers or Sisters Children, be lawful.

THe displeasure of the Canon law against such marriages is so high flown, that no lesse can take it off than an utter dirimption of them even though they be not ratified only, but consummate by carnal knowledge; and the grave authority of some ancient and holy Fathers, and eminent Doctors of the Church (besides five several Councells) have passed an hard sentence upon them. The main ground of the supposed unlawfulnesse, is that clause of Gods Law which was more than judiciall; *No man shall approach unto any neer of kin to his flesh to uncover their nakednesse, I am the Lord.* Levit. 18. 6. which though *Cornelius*

nelius à Lapide * (following his Rodulphus) would seem to restrain to the ensuing particularities onely; yet they may not think that God will suffer so universal a charge to be so straitly pent; especially, when we know that there are divers other no lesse unlawfull copulations omitted in this black Roll of uncleannesses, than those which are expressly mentioned, the rest being intended to come in by way of analogy onely: for it is easie for any reader to observe, that all the severalties of the degrees prohibited run still upon the male; under which, if the like exorbitances of the other sex were not meant to be comprehended, females should be lawfull, and the law imperfect; To marry then with a Cousen-german is apprehended by these Canonists to be an approach to one near kin to our flesh; and there-

* Cor. à Lap. in locum.

fore

fore intimated in that inhibition. Doctor * *Willet* (a man much deserving of Gods Church) conceives these marriages to be analogically forbidden, in this catalogue of *Moses*: For, saith he, if the degrees of affinity be limited to the third or fourth degree; as it is not lawfull for a man to marry his wifes daughters daughter (*Levit.* 18. 17.) why should not the line of consanguinity hold to the fourth degree likewise; and so neither the sonne to marry his fathers brothers daughter; or the daughter the sonne? But that worthy Divine did not heedfully observe the great difference betwixt these instanced degrees; for the one of these is an equall line, the other in an unequall; the one is a collateral consanguinity, the other is in a directly descending affinity; so as the husband should be grandfather in law to the wife, which

* Will. Syno. Controver. 15. de Matr. q. 1.

in

in all reason were very unlawfull, and absurd; since in all those descending degrees there is a kinde of reverentiall inequality betwixt the lower and superiour, which abhorres from all proportion of a match; whereas the collateral equidistance of Cousins-german from the stock whence both descend, hath in it no such appearance of inequality. Certainly then, no analogy can draw these marriages within the prohibition; whether the nearnesse of approach to our flesh be a just barre unto them, must be further considered.

Gregory *, (whom some would fain intereste in our English Apostleship) writing to his *Augustine*, in way of answer to his Interrogations, puts these marriages in the same rank with the marriages of brothers and sisters; which he brands with this note, that they seldome ever prove

* Greg. resp. ad Interrog. Augustini, q. 6.

fruit.

fruitfull; As for those of brothers and sisters, (which were usual, as *Diodorus Siculus* tells us) amongst the *Egyptians*, and are this day in use in barbarous Nations) nature it self abominates the mention of them; In the first plantation of the world there was a necessity of them; as without which there could have been no humane generation; but afterwards, as the Earth grew more peopled, so these matches grew still more odious: like as it was also in the first plantation of the Church; the holy Seed being confined to a narrow compasse, were forced, unlesse they would joyn with Infidels, to match sometimes over-neer to themselves; as even *Abraham* himself, the father of the faithfull, married his brothers daughter; but when the bounds of men and beleevers came to be enlarged, the greater elbow-room opened a wider liberty of choice; and now

Gods

Gods select people found it meet to observe a due distance in the elections of their wives; so regarding the entirenesse of their Tribes, as that they fell not within the lines of prohibition; wherein no mention being made of brothers and sisters children, in all ages and Nations, some have thought fit to make use of their freedom in this kind.

What need I to urge the case of *Zelophehads* five daughters, *Num.* 36. 11. who by Gods own approbation were married to their fathers brothers sonnes; To mince the matter, and to make these sonnes, nephews, according to the Hebrew phrase (as Doctor *Willet* endeavors to doe) is without either need, or warrant; since these scruples were not since that time stood upon by the Jewish people: yea this practise was no lesse current among the civiller Heathens of old; I could tell you of

Cluentia

* *Cluentia* (by *Ciceros* relation) married to her cousen *Marc. Antius*; of *Marcus Antonius* the wife and vertuous Philosopher, marrying his cousen *Fusilia*; and a world of others, were not this labour saved me by the learned lawyer *Hotoman*, who tells us how universall this liberty was of old, as being enacted by the lawes of the Roman Empire; and descending to the lawes of † *Fusilian*, confidently affirmes that for five hundred years, all Christian people (*magno consensu*) allowed and followed these Imperiall constitutions concerning Matrimony: Although I might here put him in minde of *Theodosius* enacting the contrary in his time; as if it is like, by S. * *Ambroses* instigation; who then sharply inveighed against these matches in a ve-

* Cic. orat. pro Cluentios. † Hotoman de grad. cognat. Laurent. Kirchovius profel. Rostoch. in consil. Matrimon. * Ambr. ep. ad Paterni. um &c

hement epistle to *Paternus*, being then in hand with a marriage betwixt his sonne and his sisters daughters. But excepting that good Emperor, the coast was clear perhaps, for the Caesarean constitutions; not so for the judgement of Divines, amongst whom, it were enough that S. *Ambrose* and S. *Augustine* (the flower of the Latine fathers) if no other, doe bitterly oppose it: This judgement being found not probable only, but exceeding profitable to the Roman See, it is no wonder if it obtained both credit and vigour from thence. Decrees and Decretals make this inhibition good, not without damning the contrary practise; and now the Civill and Canon lawes clashing with one another, how can it be but the prevalence must be according to the power of the abettor? What liberty the Court of Rome hath taken to it self in the restraint of marriages,

ges, and upon what ground; all Christendome both sees, and feels. One while their prohibition reaches to the seventh degree in natural kindred; than to the fourth. One while the impediment of spiritual cognation, is stretched so far, without any colour of divine authority, as that (what by * Baptisme, what by Confirmation) twenty several persons are excluded from the capacity of inter-marriage; another while the market is falne to fourteene. And wherefore this? but for the sweet and scarce valuable gain of Dispensations, upon these occasions flowing into the Lateran Treasure. For which considerations we have learned not to attribute too much to the judgement or practise of the Roman Courtiers in this point. Upon the summing up

* *Hodie cessat fraternitas & aliqua ex parte compaternitas per Concilium Trident. Sess. 24 Navar. c. 22. n. 27.*

rien of this discourse, will you be pleased to see the vast latitude of different opinions concerning these marriages? The Canon law decrees them with such rigour, as to ordain them (though after a conjugal conversation) separated; some moderate Divines (as Doctor *Willet*) finding this sentence too hard, goe not so far, but hold this neerenesse of blood a sufficient barre to hinder a marriage contracted, though not consummate: some others (as Mr. *Perkins* in my conference with him) hold it, though not unlawfull, yet inconvenient: some others, (as learned and acute M. *Wootton*, and M. *Alterfoll*, who hath written a very large discourse in way of vindication of them) hold them both lawfull, and not inexpedient. * *Hotoman* yet higher, *pium & Christianum esse, quod du-*

* Hotoman de vita matrimon. p. 6. citante Kitchovio, ut supra.

drum

arum sororum liberi matrimonio copulentur; that such a marriage is pious and Christian: In all this variety if you desire my opinion, I shall neither censure such marriages where they are made, nor yet incourage them to be made, where they are not: To those that are free I should be apt to suggest counsails of forbearance; the world is wide, the choice abundant; let it be never so lawfull, yet how unwise and unsafe were it to put the conscience upon the nicety of a dangerous scruple, when it may keep aloof off, with a cleer freedome, and resolute contentment: That these marriages are disallowed by so great authority, should be reason enough to divert the free thoughts to a safer election: and again, that these marriages are allowed both by Civil Lawes, and by the judgment of eminent Divines; and not any where forbidden either (*Jure Cæsareo* or

Apostolicos by Gods law or Cæsars should be reason enough to bear up the hearts of those who are so matched from a scrupulous dejection. Let the persons therefore so married enjoy themselves with mutual complacencie and comfort, not disquieting themselves with needless anxieties. Let those single persons who have the world before them look further off, and soften their affections at a more unquestionable distance: As it was wont to be worthy Mr. Perkins his expression to this purpose. Let those who must walk close to the brim of a steep precipice, look well to their feet, and tread sure, and so they may come off perhaps as safely as those that are further off, but if a man be to choose his way, let him so cast it, as that he may not approach neer to the brink of danger.

Case

CASE VI.

Whether it be necessary or requisite there should be a witnessed contract, or espousals of the parties to be Married before the solemnization of the Marriage.

IT is necessary we should distinguish betwixt those things which are essential to the very being of marriage, & those which are requisite to the orderly, and well being of it: It may not be denied that the Marriage is true and valid, which with full consent of parties is made without the intervention of a previous contract in a due and lawfull form prescribed by the Church; but it is no lesse true that such a marriage is very unmeet, and liable to just exceptions: That God *, who is the author and institutor of Marriage made a difference

* Exod. 22. 16. Levit. 18. 20. Deut. 20. 7. Deut. 22. 23. 23. 28. 1 Cor. 7. 2.

in his law, betwixt a betrothing, and a matrimony; he that ordained the one, ordained the other also; and ordained the one in order to the other: And this was constantly observed in the practise of Gods ancient people accordingly: so we find the * Blessed Virgin espoused to *Joseph* before hit taking her to wife: neither did the Christian Church think fit to vary from so Holy a Pattern, whereto S.† *Paul* alludes, when writing to, and of the Church of *Corinth*, (which he had happily planted, and forwarded in grace) he saith, *I have espoused you to one husband, that I may present you as a chaste virgin to Christ.* Loe he hath betrothed them to Christ in that he had entred them into a Covenant of Grace, and prepared their souls for a full consummation of their blessed union with

* Compare Mat. 1. 18. with Deut. 22. 23. † Magdeburg. Cent. 2. de Conjugio, 2 Cor. 11. 2.

Christ

Christ in glory; intimating (as Matrimony is a lively resemblance of our spiritual conjunction with the Lord of Glory) that our bodily espousals here below, are they which must make way for a complete marriage ensuing: It were not difficult, if it were needfull, to deduce this holy practise down from the primitive times to the present: Before the *Nicene* Councel we finde the Synod of *Ancyra* enjoyning a severe penance to the man that should defile his body by an incestuous copulation, after espousals contracted: And the Councel of *Eliveris* or *Granado*, about the time of the *Nicene* convention, takes such notice of these bethrothings, as that it decreed †, that if any Parents should break the faith mutually engaged in these espousals they should be held off during the space of three years from the Com-

* Concil. Ancitan. can. 21. † Concil. Eliv. c. 45.

mution. What should I trouble you with the Decree of* *Syricius* concerning these contracts; or with the pregnant testimonies of S. *Chrysostom* and *Ambrose* to this purpose; which were but to waste time and paper upon so clear a Truth? As there was no Christian Church which did not carefully observe this sacred Rite: so above all other the Roman hath been at least curious enough in calling for a strict and severe account of their espousals: what voluminous discourses, what a world of nice questions have fallen from the pens of their Canonists and Casuists concerning this subject? Certainly this is a point of so much use and agitation amongst them, that were it not for the quarrels arising here-from, it is to be feared their consistories would want work, and their Advocates imployment? But to speak ingenuously,

* Lubbrand in Syric.

those

those of the Roman Clientele are not more carefull and punctual in scanning and observing the rules and practise of their espousals, then ours here, are incuriuus of both. How many have we heard to say, they will make no promise of themselves, till they come to the Church-dore? and of those that do contract themselves, how weakly and insufficiently is it performed on many hands? so as their act, if questioned, is no way obliging; not such as upon the least discontent, will endure a contestation.

Now whereas there is a double contract, or espousal, the one of the future; the other of the present: that of the present, if it be expressed in full terms, differs nothing from marriage it self, save onely in the publique solemnization; which doubtlesse is a ceremonie so requisite, as that without it an horrible confusion must

needs follow both in Church and State.

That of the future, is a mutuall engagement of both parties that they will marry each other; which is most properly an espousal-contract; giving both assurance to each other of a mutual consent to a Matrimony that shall be; and yet with all some meet respiration of a more full triall, and inquiry into each others condition. For which purpose the wisdome of the Church hath ordained that there should be a solemn publication of that more private Contract three several Sabbaths, to the whole Congregation; not without the earnest charge of a discovery of whatsoever impediment might justly hinder the intended Matrimony.

The frequent, but unfit, use of these Espousal contracts in the Roman Church, betwixt their children

in

minority (allowing * seven years in either party for a meet age to this purpose) must needs breed both much question, and inconvenience; but in those which are of a mature age, and therefore able to judge of what may be most expedient for themselves, this institution cannot be but singularly usefull and beneficial. For neither is it meet that so great a work, and so highly importing us as Matrimony, should be rashly and suddainly undertaken; neither doth it a little conduce to our safety, that since marriage once passed, is irreversible, we may have some breathing-time betwixt our promise and accomplishment to inform our selves throughly before it be too late, what we must trust to for ever. For we may take notice, that though marriage is

* Ætas legitimè contrahendi matrimonium, est in masculis 14 annis, in fœminis 12; Sponsalibus autem contrahendis, septem in utroque. Navar. c. 22. n. 2.

in-

indissoluble, yet these espousals, or contracts of a future marriage, are not so: many things may intervene betwixt this engagement by promise, and that full and complete solemnization, which may break off the match.

The Casoists determine of seventeen several causes at the least, which may sort to this effect; some whereof have a proper relation to the Romish religion; others are common to what ever contracts of this kind; I shall not grudge you the mention of them all. An espousall-contract therefore may (according to their judgement) be broken off,

By the willing remission of both parts, although it had been seconded by an oath: By the entrance of the one party into some order of religion: By a contract with some other in words of the present: By the travail of one of the parties into remote countries

courtries, and not returning upon a lawfull summons at a time prefixed by the Judge: By an affinity supervening upon the sinfull copulation of one of the parties with the neer kinswoman of the other: By the absolution of the Judge upon suit of one of the parties repenting and pleading minority: By lapse of the time set for the accomplishment of the marriage by the disease of one of the parties being fallen into palsie, leprosie, the Neapolitan sickness, or any other contagious distemper, or notable deformity: By the fornication of one of the parties committed since the contract: By a vow of chastity preceding the contract: By some capitall enmity intervening betwixt the families and persons of the contracted by the omission of performing the promised conditions, as when the dowry agreed upon, is retracted or held off: By the same of

a Canonical impediment; By ſuſception of Orders after contract; By the ſupervention of a legal kindred, unexpected; By the harſhneſſe and aſperity of diſpoſition in either party; And (which may comprife many other particularities) by the falling out and diſcovery of any ſuch accident, or event, as if it had been ſooner known would have prevented the making of ſuch a contract. All theſe, ſay they, may barre a marriage after eſpouſals: but yet ſo, as that the parties may not be their own arbiters, to break off their contracts at pleaſure, but muſt have recourſe to the Judge Eccleſiaſtical, and ſubmit themſelves to the over-ruling ſentence of the Church.

If you balk theſe which are proper to the Romiſh ſuperſtition, yet you ſhall finde many juſt and allowable cauſes which may (after a contract of eſpouſal) interrupt a purpoſed matri-

marrimony: so as, if there were neither rule, nor example of any such preceding engagement, yet surely it were very fit for our own security, and our confident and comfortable entrance into that estate which we shall never put off, to observe carefully this previous betrothing of ourselves, ere we knit the knot that can never be loosed.

CASE VII.

Whether there ought to be a prohibition and forbearance of marriages, and marriage duties for some appointed times.

IT is one thing what is lawfull, another thing what is fit and expedient; as S. *Paul* hath taught us to distinguish: marriage being of Gods own institution, and that in the perfection of Paradise, there can be no time

time wherein it may be unlawfull to celebrate it; yet there may be times wherein it is unfit: There is the like reason of times and places, both of them are circumstances alike. The debt of the marriage-bed not onely may, but must be paid by them whom God hath called to that estate; yet there are places, wherein it were barbarous and peculiar to defray it: even, besides those places which are destin'd to an holy use, the Jews of old held this act done in the field or under a tree, worthy of scourging.* Doubtless, there are times so wholly consecrated to devotion, as that therein it would be utterly unseasonable to let our thoughts loose to the most lawfull pleasures. Hence is that charge of the Apostle, *Defraud not one the other, except it be with consent for the time, that ye may give your selves to fasting and prayer:* 1 Cor. 7. 5.

* Maimon. Shecard. de Reg.

So

So then as *Solomon* himself can say, *There is a time to embrace, and a time to refrain from embracing*: Eccles. 3. 5. But what the limitation of this time may be, no small question hath been raised in the Church of God; neither do these want extremities on both sides: The Church of *Rome* hath heretofore been excessively large in her prohibitions, forbidding the solemnization of marriage upon pretence of the holiness of the great feasts to be observed, for the whole third part of the year, neither doth the account fall short, if we reckon from the Advent to the Epiphany; from Septuagesima Sunday to the Octaves of Easter; and from three dayes before the Ascension to the Octaves of Pentecost; all which had wont to be strictly kept; besides the feast of St. *John* Baptist added by some, and the four Ember weeks by others; but now of late upon second

cond thoughts, their Councel of *Trent* have found it meet to shorten the restraint, and somewhat to enlarge the liberty of the seasons for marriage, having exempted the two onely solemn Feasts of Easter and the Nativity; and abridged some previous weeks of the former: and for us how observant our Consistories had wont to be of those inhibitions for their own gain, every Almanack can witnesse. Some worthy Divines in our Church did not stick to professe their great dislike of our conforming herein to the Church of *Rome*, to the scandal of the Reformed; Concerning both which, I must say: that if either we, or they doe put any holinesse in the time exempted, or any unholinesse in the act inhibited, we cannot be excused from superstition; Can any time be more holy than Gods own day? yet on

[1] Concil. Trid. Sess. 24.

that

that day we doe commonly both publish marriages, and celebrate them. But if, as in some solemn fasts indicted by the Church for some publique humiliation, we both doe, and injoyn to abstain from all conjugal society; so in a desire the more devoutly to celebrate the memory of Gods infinite mercy to mankind in sending a Saviour into the world for our Redemption, and of the glorious resurrection of that Son of God for our justification, we shall take off our selves from all worldly cares or delights, I see not why it should not be both lawfull, and commendable.

But, to say as it is, as the Romanists are guilty of too much scruple in this kind, so too many of our own are no lesse faulty in a careless disregard of the holiest occasions of restraint; which I would to God it did not too palpably appear in the scandalous

dulous carnality of many (other wise inoffensive) professors. It is a common practise (which I have long wisht an opportunity to censure) that husbands and wives forget one another too soon: Scarce are their consorts fully cold, ere they are laying for a second match; and too few moneths are know for the consummation of it. Let me be bold to say, this haste hath in it too much not immodesty onely, but inhumanity: If we look abroad into the world, we shall find not among Gods peculiar people onely, but even amongst the very Heathens, a meet (and not niggardly) intermission betwixt the decease of the one husband, or wife, and the marriage of another: A whole year was found little enough for the wife to mourn for her husband departed: and so is still amongst the very Chineses, though Atheous Pa-

* Alex. ab Alex. l. 3. Gen. dier. c. 7 Cod. l. 2. tit. 12

gans;

gans; And by the civill Lawes, a woman marrying within a year after her husbands death is counted infamous.

It was no short time that * *Abraham* (though now very old) breathed upon the death of *Sara*, (the first of wives mentioned as mourned for) before he took *Ketorah*, and yet the Hebrew † Doctors observe that there is a short letter in the middst of that word which signifies his mourning; to imply, (say they) that his mourning was but moderate: I am sure his sonne *Isaac* (*Gen* 24. 67.) was not comforted concerning the death of that his good mother, till three years after her decease: At which time he brought his *Rebecca* into that tent which even stil retained the name of *Sarahs*: whereas with us, after the profession of the greatest derenesse,

* As appears by comparing of Gen. 23. 2. with 25. 1. † [illegible] Gen. 23. 2.

the

the old posie of the death-ring tells what we may trust to, *Dead and forgotten*. Who can but blush to read that some heathens were fain to make lawes that the wife might not be lowed to continue her solemn mourning for her husband above ten moneths, and to see that our women had need of a law to inforce them so to mourn for the space of one? In other reformed Churches there is a determinate time of moneths set, untill the expiration whereof widowes, (especially the younger) are not suffered to marry, it were more than requisite that these loose times were here with us curbed with so seasonable a Constitution; but it were yet more happy, if a due regard of publique honesty and Christian modesty could set bounds to our inordinate desires, and so moderate our affections, that the world may see we are led by a better guide than appetite.

CASE VIII.

Whether it be necessary that marriages should be celebrated by a Minister; and whether they may be valid, and lawfull without him.

IT is no marvell if the Church of *Rome* (which holds marrimony a Sacrament, conferring Grace by the very work wrought) require an absolute necessity of the Priests hand in so holy an act; but for us, who (though reverently esteeming that sacred institution, yet) set it in a key lower, it admits of too much question whether wee need to stand upon the terms of a Ministers agency in the performance of that solemn action: There are those in these wild times that have held it sufficiently lawfull for the parties having agreed upon the bargain before friends and witnesses, to betake themselves to bed:

others have thought this act of conjoyning the married persons in wedlock a fitter act for the Magistrate to undertake. And certainly if there were nothing in marriage but meere nature, it could not be amisse that men and women should upon their mutual agreement couple themselves together after the manner of brute creatures; And if there were nothing in marriage but meere civility, the Magistrate might be meet to be imployed in this service: But now that we Christians know matrimony to be an holy institution of God himself; which he not onely ordained, but actually celebrated betwixt the first Innocent pair; and which being for the propagation of an holy seed, requires a speciall benediction; how can wee in reason think any man meet for this office, but the man of God, set over us in the Lord, to derive the blessings of heaven upon our heads?

heads? From hence therefore have our wholsome lawes taken a just hint to appropriate this service to a lawfull Minister onely; so as what ever private contract may be transacted in corners betwixt the parties affected to each other, yet the marriage-knot cannot be publiquely knit by any other hand, then Gods Ministers. And herein certainly we have just cause to blesse the wisdome both of the Church and State, which hath so regulated these matrimoniall affaires; as that they are not onely orderly but safely managed: For doubtlesse were not this provision carefully made, the world would be quite over-run with beastlyneſſe, and horrible confusion. And in this poynt we may well give the Church of Rome her due, and acknowledge the wise care of her Lateran and Tridentine Councells, which have enacted so strict Decrees against Clandestine marriages, and

have taken so severe a course for the reforming of many foul disorders in these matrimoniall proceedings, as may be of good use for the Christian world: Had they don the like in other cases, their light had not gone out in a snuffe: As therefore it is generally both decreed and observed (not without excellent reason) in all Christian Churches, that marriages should be solemnized in the publique Congregation of Gods people, so it cannot but be requisite that it should be done by him, who is ordained to be the mouth of the Congregation to God, and the mouth of God to the Congregation; And, as under the Law, the Priest was the man, who must conveigh blessings from God to his people; so under the Gospell who can be so apt for this divine office, as he that serves at the Evangelicall altar? And if all our marriages must be (according to the Apostles charge) made

made in the Lord, who is so meet to pronounce Gods ratification of our marriages, as he who is the profest Herald of the Almighty? As it is therefore requisite (even according to the Roman Constitutions) that he who is betrusted with the Cure of our souls, should besides other witnesses be both present and active in, and at our domestique contracts of matrimony: so by the laws both of our Church and Kingdome, it is necessary he should have his hand in the publique celebration of them. There may then be firm contracts, there cannot be lawfull marriages without Gods Ministers.

Case IX.

Whether there be any necessity or use of thrice publishing the contract of marriage in the Congregation, before the Celebration of it: and whether it be fit that any dispensation should be granted for the forbearance of it.

THere were amongst the Jews certain ceremonial Observations (besides the Precepts) which they called the Hedg of the law; and such there cannot want amongst Christians, whose prudence must direct them both to the ordaining, and keeping of some such expedient rules, as may best preserve Gods laws from violation: Of that kind is this which we now have in hand; This publique and reiterated denunciation of * Banns before matri-

* Concil Trident. Sess. 24. Decret. de Reformat. matrim. n.

mony,

mony, is an Institution required and kept both by all the Churches of the Roman Correspondence, and by all the Reformed; amongst which, as ours, is most eminent, so it hath still expressed the most zeal and care of the due observing of so wholsome a Rite: six several * Canons were made in our Provincial Synod under the Authority of King *James* of blessed memory, in the year 1603. to this purpose; with as strict charges, restrictions, and cautions, as the wit of man could in this case devise; and the late Directory hath found cause to second so useful and laudable a Constitution: For the convenience, if not necessity, whereof, we need no other argument than the grievous mischiefes that have followed upon the neglect of this ordinance; that one were enough, which is instanced by the Triden-

* Constit. 62, 62, 101, 101, 103. 104.

tine * Synod it self, that some lewd persons having secretly married themselves to one, take liberty to leave that match, and publiquely joyn themselves to another, with whom they live wickedly in a perpetually adultery; the frequent practise whereof in those hoter climates we may easily believe, when we see that in our own more temperate region, the fear of hanging cannot hold some off from so foul a sinne. Let me add hereunto the late experiments of some odiously incestuous marriages, which) even by the relation of our Diurnalists) have by this means found a damnable passage, to the great dishonour of God, and shame of this Church; And hereupon the sad issues of stoln Marriages, wherein Parents have been most feloniously robbed of their Children, are too feelingly known, and irrecove-

* Concil. Trid. ubi supra.

rably

rably lamented: But as for unfitneſſe and inequality of matches, both for age and condition, (to the too late repentance and utter undoing of both parties) they are ſo ordinary, that they are every dayes Occurrences: And all theſe evils have ſenſibly grown from the want of theſe publique Denunciations of Bannes; partly upon the unhappy throwing open of the fence of diſcipline, and partly upon the ſurreption of ſecretly-miſ-gotten diſpenſations; And though that forementioned Synod of ours ſeconded by Royal authority[1], took the moſt probable courſe that could be conceived (the liberty of thoſe Faculties being continued) for the preventing of theſe abuſes; as the reſtraint of the grant of them by any other, ſave thoſe who have Epiſcopall authority; and ſecurity to be

[1] Conſtit. and Canons ut ſupra, Can. 101, 102, 103.

given upon good bonds that the coast is cleare from all pre contracts, suits of Law, and prohibited degrees; that the full consent of Parents or Guardians is had; that the marriage shall be celebrated in the parish Church where one of the parties dwelleth; and lastly the oaths required of two sufficient witnesses (one whereof known to the Judge) that the expresse consent of parents or Guardians goes along with the match intended; and that there is no impediment from any pre-contract, kindred, or alliance: yet notwithstanding all this prudent caution we have by woefull experience found our offices cheated; faculties corruptly procured; and matches illegally struck up contrary to the pretended conditions: Whereas all this mischief might have been avoided, if as no marriage may be allowed but publique; so thole publique marriages

might

might not be celebrated but after thrice publication of the contract in both the Parish Churches where the persons contracted are known to inhabite: For so both the Parents of either side cannot but be acquainted with the ingagements of their children; and if there be any just hindrance, either by precontract, or by proximity of blood, or affinity, it cannot be concealed, that so the snare of either an unlawfull or prejudicial matrimony may be seasonably eschewed: To this good purpose therefore it is no lesse then necessary (as I humbly conceive) to be both enacted and observed, that no marriage should be allowed of any person whatsoever (except perhaps the Peers of the Realm, who are supposed to be famously known through the Kingdome) without a solemn publication of their contracts at three severall meetings to the Congrega-

tion

tion assembled; and that there may no dispensation at all be granted to the contrary upon any whatsoever conditions: And if some pretend bashfulnesse, others fear of malicious prevention (as the Tridentine Doctors suggest) yet it is fit that both should vail to the inevitable danger of those mischievous inconveniences, which follow upon their clandestine matches, and silent dispensations.

CASE X.

Whether marriages once made, may be annulled, and utterly voided; and in what cases this may be done.

IN what orely case a divorce may be made after a lawfull marriage, you have seen before; now you inquire of the annulling or voiding of marriages made unlawfully: which doubtlesse

doubtlesse may be done by just authority upon divers well-grounded occasions: For as it is an indispensable charge, *Those whom God hath joined together let no man put asunder*; so it no lesse truly holds on the contrary; Those whom God hath forbidden to be joined, let no man keep together.

Our Casuists are wont to be very copious in this subject, distinguishing betwixt those Impediments which may hinder a marriage from being made, and those which may undoe and void the marriage once made. They insist upon many particularities of both kindes; and some perhaps too many: I shall instance onely in those of the latter sort which are unquestionable; whereof the first shall be a misprision of the match; when one party is mistaken for another; as when he who by a full contract consented to marry with *Anne*, is by a fraudulent substitution

substitution put upon a marriage with *Mary*; whether upon the likeness of the woman, or the want of a discerning sense in the man; or by some cunning conveyance of the perfidious contrivers? For certainly, it is the consent that makes the marriage; and if the hearts be not joined together by mutual agreement and affection, the coupling of the hands is but a ceremonie utterly ineffectual: I doubt not but it was in *Jacobs* power to have disavowed the match with *Leah*, whom his father in law had deceitfully obtruded upon him, being more injurious in changing his wife, than in ten times changing his wages; since his heart was not accessary to that match, which the darkness of the night, and the subtlety of a *Laban* had drawn him into.

The like case is in the marrying a bond-woman in stead of a free; a base plebeian in stead of a person of honour:

honour: As then we use to say that mis-reckoning is no payment, so we may well affirm that a mis-marriage is no true wedlock; and therefore justly to be branded with a nullity.

A second may be the sordidity and unnaturalness of the match; when the parties incestuously marry within the first collateral degree, of Brothers and sisters; the very mention whereof, even nature it self, not depraved abhorres: so as I cannot but wonder that the Roman Schoole should be so much divided in this point, whiles * *Bonaventura, Richardus*, and *Durand*, hold such a marriage even by divine law, a nullity; contrarily *Aquinas, Cajetan, Thomas de Argentina* and others (whom *Covarruvias* recites) defend this to be onely an impediment by the Canon law, and therefore that it may be in

* Martin. Alphonſ. Vivald Candelab. aureum de matrim. & partic. de Conſanguin.

the

the Popes power to dispense with so foul a matrimony; Against whom upon better reason, * *Scotus*, and *Dominicus à Soto* prove such marriages by the Law of nature to be utterly void and null; with whom all ingenuous Christians cannot but willingly concurre in their judgements.

A third may be the horriblenesse of a crime committed in the way to a wicked match; and that of two sorts: the one of murther, the other of adultery: The former, when the wife hath conspired with the adulterer to murder her husband, with an intent to marry the murtherer; or in the like case the husband to murther the wife.

The latter when a man living in a known adultery with another mans wife, contracts matrimony with the adultereſſe in the life time of her husband,

* Scot. in 4. d. 40. S. 1. ibid. q. un. art. 4.

A fourth is the indiſſoluble knot of marriage with a former ſtill ſurviving husband or wife, the force whereof is ſuch, as that it fruſtrates and voideth any ſupervening matrimony, (except in the caſe ſpecified in the foregoing diſcourſe of Divorce) during the natural life of the conſorts. Many unhappy, and perplexed caſes have we met withall in this kinde; neither doth it ſeldome fall out, that the husband being confidently reported for dead in the warres, or in travell abroad, the wife after ſome years ſtay, and diligent inquiſition, finding the rumor ſtrongly verified by credible teſtimonies, and tendered oathes, begins to liſten to ſome earneſt ſuitor, and beſtows her ſelf in a ſecond marriage; not long after which, her onely true, revived husband returns, and challengeth his right in that his lawfull wife pretending the miſ-carriage of letters

letters and messages sent by him in that forced absence. In this case what is to be done? The woman hath cast her self upon the danger of a Capital law, except she have expected the time limited by statute; or if she escape, one of the husbands is to seek for a wife, whom both may not enjoy. Doubtless the second marriage, is by Ecclesiastical authority to be pronounced, as it is, null; which indeed never had any true right to be: and the first must be content to swallow its own inconveniences.

A fifth may be a violent enforcement of the match: when a woman is upon fear of pain, or death compelled to yeeld her self in marriage, and is not perswaded, but affrighted into the bonds of wedlock: surely this is rather a rape than a matrimony, and therefore, upon utter want of consent, a nullity.

A sixt may be a preceding, irremediable

dible impotency, or incapacity of marriage duties; whether natural, or advantageous; whether by way of perpetual maleficiation, or casualty: I say, preceding; for if any such disability be subsequent to the marriage, the nullity is avoided; But if the persons find in themselves before hand such remediless incapability of a marriage estate, they shall be highly pardons to each other, and shall foulely abuse the ordinance of God in their entring into such a condition: For it is apparent, that the main ends of marriage, are herein utterly frustrate; which were by Gods appointment, the propagation of mankind, and the remedy of incontinency; neither of which being attainable in such a defective estate of body, justly is such a match pronounced a nullity.

But here I cannot but take occasion to commend the modesty of the women

men of our nation; amongst whom, there are so rare examples of suits in this kinde, prosecuted in our Ecclesiastical Consistories; it is not to be doubted but there are many defects of this nature to be found every where, yet scarce one in an age offers to complain, and call for redresse: so as it seems they are willing to smother all secret deficiencies, in a bashfull silence; whereas those of other warmer regions impatient of the wrongs of their conjugal disappointments, fly out into open contestations, and fearelesly seeke for those remedies, which the laws provided in such cases will allow them. Certainly the merit of this modest temper is so much the greater, by how much more it is concealed from the world, and those of either sexe that are content to bite in their hidden grievances of this kinde, are worthy of double honour

honour from thoſe conſorts, whoſe injurious infirmities they both have not diſcloſed, and ſuffer in ſuppreſſing.

ADDITIONALS.

Certaine cases of doubt, besides the formerly published, having been proposed to me, and received a private solution; I have thought fit, upon the addresse of a second Edition, to adjoyn them to their fellowes, for the satisfaction of any others, whom the same Cases may concern.

CASE I.

Whether a Marriage consummate betwixt the Uncle and Neece be so utterly unlawfull, as to merit a sentence of present separation.

RESOLUTION.

WHat prodigious Matches have been of late made, and are still continued, upon advantage taken of the unsettlednesse of the times, I had rather silently

silently lament, then openly proclaim to the world: Such as are not capable of any Apology, call for our blushing and tears; but there are some others which dare stand upon the terms of defence: Such is this which you have here propounded on the behalf of your friend, whom it seemes a mis-learned advocate would fain bear up in a course altogether unjustifiable; that cause must needs be desperately ill, that can find no mercenary abettors: His offensive marriage with his Neece is heartned by a sophisticall pleader, whose wit and skil is so ill bestowed in this case, that I wish his fee might be perpetuall silence: but when he hath made use of his best art to so bad a purpose, those colours of defence, wherewith he thinks to daub over so foul a cause will prove but water-colours, which shall easily be wash'd off by this present confutation.

It

It was lawfull, he saith, before the Leviticall Law, thus to Match: So were worse marriages than this: Let him tell me that *Cain*, and *Enoch*, and *Seth* married their own Sisters; as *Saturne* also did, by the report of *Diodorus Siculus*; Necessity made it then not unlawfull: it is a just rule of * Law, Those things may not be drawn into precedent, which have been yeelded upon meere necessity; as we use to say that necessity hath no law, so it can make none. Afterwards, as mankind grew, nature it self taught men to keep further aloofe from their own flesh; and still remotenesse of distance enlarged it self with time.

Abraham (saith he) married his neece *Sarah*, *Gen.* 11. 29. (if at least *Sarah* were *Isah*) *Nahor* his neece *Milcha*, *Amram*, his Aunt *Jochebed*,

* In Argumentum trahi nequeunt, quæ propter necessitatem sunt concessa.

and these not without a large blessing upon the bed. Let him tell me also, that *Jacob* married two Sisters, and conversed conjugally with both (which were now shamefully incestuous) yet was herein blessed with the issue of six of those *Patriarchs*, who were the root of those glorious stemms of *Israel*. If we should speak most favourably of these conjunctions, to rank them under *malum quia prohibitum*, it must needs follow, that till the prohibition came, they could not be censured as evill: Though good Authors make it justly questionable, whether these fore alledged marriages should deservedly be charged with a sin, or excused by Gods extraordinary dispensation, in the mean time the blessing was to the person, not to the act: even *Lots* incestuous copulation with his daughters sped well, two famous nations sprang thence, and of one of them, the

the gracious progenitrice of the Saviour of the world; Yet this is no plea for the allowance of that monstrous confusion. After the law, one justifiable example were worth a thousand before it.

Lo, good *Caleb* (saith he) married his daughter *Achsah* to his brother *Othniel Josh.* 15. 16. 17. Indeed, this case comes as home to the business as it is far off from the text. See whether mis-prision of Scripture may mislead us: A man that understands nothing but the English, or Vulgar Latin, may easily run into so foul an error; weigh but the place well, and you will soon find the fault without me; *Othniel* the sonne of *Kenaz*, *Calebs* brother, tooke *Kiriath-Sepher*, and *Caleb* gave him *Achsah* his daughter to wife; The English wanting cases expresses it doubtfully, it will be clear in the Latin, as *Montanus*, and *Pagnine*, two great Masters

of the Hebrew in their *Interlinear*, read it, *Othniel filius Kenaz, frater Caleb*, *Othniel* the Sonne of *Kenaz*, which *Kenaz* was *Caleb's* brother. Both the Hebrew and Chaldee cleer that sense: So the Septuagint, as *Emanuel Sa* also urges upon that place, *Judges* 1. 13. expressly say, that *Kenaz* was the brother of *Caleb*, and not *Othniel*; wherein yet I cannot much blame an unbalanced judgement, while I finde the septuagint contrary to themselves: For in *Josh.* 15. 16. they say, *Othniel* was *Caleb's* younger brother, In *Judg.* 3. 9. they say, *Kenaz* the father of *Othniel* was so, for which there is no excuse, but the large sense of a brother in the Hebrew, *We are brethren*, saith *Abraham* to *Lot*, yet he was *Lot's* Uncle: So was *Kenaz* a Progenitor to *Othniel*, for *Caleb* is stiled the sonne of *Jephunneh* the Kenezite, *Josh.* 14. 14. & *Num.* 32. 12. The case was onely this, *Kenaz* was

the

the Ancestor of *Caleb*, and one of the same name was his brother, the Father of *Othniel*: what can be more plain than 1 *Chron.* 4. 13. *And the sons of Kenaz, Othniel and Seraiah*; So as if we take this most strictly to the letter, it implies nothing but the marriage of two Cozens German, *Othniel* the sonne of *Kenaz*, and *Achsah* the daughter of *Caleb*, Brothers children, as *Bucer* upon the place, *Melanchton* in his Tract *De Conjugio*, *Paulus*, and indeed, who otherwise? And now by this time you see what a poor ground this is to build upon; rather, you see a castle, not built on the sand, but in the ayre, meer misconceit.

But, saith the Advocate, this marriage is no where directly forbidden in the Law, I must tell him it is but a meer shuffle to stand upon the terms of a direct prohibition, when there is one no lesse forcible, and conclusive

Two wayes may ought be effectually forbidden in the law, Either in plain expression of termes, or in clear implication of sense; surely, that is rather more in the law which it meanes irrefragably, than what it verbally expresseth: Now, however this be not in the letter of the law, yet in the sense it is. The same law that forbids the Nephew to marry the Aunt, doth *eodem sensu* forbid the Uncle to marry the Neece; In regard as of necessitie, yet identity of blood, the case is the same, however, some inequality may be conceived in respect of government, and subjection: And if upon some œconomical termes, it be more unfit for a Nephew to marrie his Aunt, than for an Uncle to marry his Neece, yet in regard of blood, and that bodily conjunction, which God principally aimes at in this prohibition, what difference can possibly be conceived? Nature hath made no

other distance betwixt the Nephew, & the Aunt, than betwixt the Niece and Uncle? or if there be any, they must be sharper eyes than mine that can discern it. God himself (methinks) hath put this out of doubt; the reason wherewith he backs his command is irrefutable, The Nephew shall not marry the Father's Sister, why so? *For she is thy Father's near Kinswoman, ver.* 12. Lo, it is the nearness of blood that makes this match unlawfull, not respect of civil law-quality; Where the blood then is equally neer, the marriage must be equally unlawfull.

That rule of Law which is pretended, *In prohibitis ita, quicquid non prohibetur, permittitur*, What is not forbidden, is permitted, had need of a fair construction; Indeed, that which is not forbidden either in words, or in necessary analogy and implication of sense, is supposed to be left at large,

But what place hath this Axiome in a case not lesse really forbidden, than the expressed? And if we should strictly follow the letter of this Maxime, it would lead us into *Sodome*; since there are marriages not specified, which would be monstrously incestuous, and such as honesty would blush to mention, as shall appear in the sequele.

Neither is there any more force in that other, *In penalibus non fit extensio*, That penal lawes should not be stretcht further, than their words import. Certainly, in some sense I know no law that is not penal; but why this law, *Thou shalt not marry thy Aunt or Neece* should be rather penal, than, *Thou shalt not commit adultery*, I know not; I am sure learned *Zanchius* accounts these of the 18. of *Leviticus*, equally moral; and *Bucanus* holds them to be against the law of nature.

And if in humane laws this axiome may

may challenge a place, yea in the royall laws of our Maker, where, under one sin mentioned, all the species and appendances, and the whole nature of that wickedness is wont to be comprised, doubtlesse it is utterly insufferable; Neither is here any extension of this prohibition beyond those limits which God hath fixed in the undoubted sense of his law; In the seventh Commandement, nothing is expressed but *adultery*, shall we therefore say neither *fornication*, nor *pollution*, nor *sodomie* is there forbidden? were not this to destroy that law, which God makes to be spirituall, and to open the flood-gates to a torrent of licentiousnesse? surely, it is easie to observe that Gods spirit no lesse meanes that which he forbiddeth to suppresse. The Psalmist sayes, *Promotion comes neither from the East nor from the West, nor from the South*. *Psal.* 75. 6. Shall we therefore say, It is

from the North? Is not that coast equally excluded, though not expressed? It is too much boldnesse to hold God too strictly to syllables, when it is safe to determine what he meant to imply? These rules then are useless. Let me see now if the Advocate can as easily shake off one or two rules of Law, which I shall return upon him in lieu of his: *Is committit in legem &c.* He wrongs the law who keeping close to the letter, strives against the intent and purpose of the law; And that other not unlike, *In fraudem Legis facit qui salvis verbis, Legis sententiam ejus circumvenit*: If this be not the case in hand, I shall profesle to know nothing.

From Rules, let us look to Authorities. It is directly maintained (he saith) by the Canonists, and Schoolemen; But what is it that is so maintained? Not this match (let no man think so) but that proposition, *viz.* that

that this match is no where directly forbidden in Gods law; if we take it of expresse terms, no wise man ever denied it; not Canonists and Schoolemen onely, or those few named Authors, but all reasonable men concurre in this truth; what needs a citation of some, where all agree? But if we take it of the necessary and clear sense of the law by just Analogie and infallible implication, now, none of the forecited, or any other orthodox Authors will deny the certain and indubitable prohibition of this marriage. How well the rest will speed, judge by their fore-man, *Tho. Aquinas*; who expresly determines it a false position, that those are joyned together by God, who march within the fourth degree; whereas this is in the third; Not to say how stiffly *Peter Lombard* urges the unlawfulnesse of marriages to the very seventh degree *vel quousque parentela potest agnosci*,

even

even as farre as the kindred may be discern'd following herein Pope *Gregory* and *Nicholas*: To shut up short, none of all his cited Authors dare be any other than professed enemies to this match; no lesse than the most zealous Commissioner of that now-abolished Court, whose late sentence is upon Record enough to this purpose.

As for *Lyra*, who is trayled in here, and cited strongly in *Othoniels* case, what shall I say? It grives my soul to see any well-minded Christian so abused by mis-information: This author hath thus, *Turpitudinem Sororis, &c.* Thou shalt not uncover the nakednesse of thy Fathers Sister, or thy Mothers Sister, (*& eodem modo*) and in the same manner is forbidden the marriage betwixt the brother, and the daughter of the Aunt, for it is the same degree: so *Lyra*: Nothing can be more peremptory against this case,

in

in favour of which he is alledged.

This would be the issue of all the rest, if it were worth the while to examine them in that, which yeelded nothing advanceth the cause of the producer. They are all as professed enemies to this match as my self; onely they deny an expresse mention of this cause, which was never either thought needfull or intended to be pleaded.

For the Protestant Divines which are cited to give testimony to the non-prohibition of this marriage, I must cry shame upon those false hands which have so palpably abused both your friend, and the Authors; Let me give but a taste of some, *Melanct hon*, *Zanchius*, *Bucanus*; who are said to allow the match, by admitting onely the degrees mentioned to be prohibited; No place is instanced, *versatur in generalibus*; You know the word, but let your eyes be judges of their

their opinion; *Melanthon*, mentioning the marriage of *Abraham* and *Sarah* in the second degree: *Hic gradus* (saith he) *in lineis inequalis &c.* In this degree, in an inequall line, marriages are forbidden by Gods Law, because God doth universally ordain a greater reverence to be yeelded to a superiour degree, than to an equall. It is the very case in hand, which *Melanthon* thus sentenceth; For *Zanchius*, he citing the text of *Levit.* 18. 13. Thou shalt not uncover the nakednesse of thy Mothers Sister; adds, *ergo neque mater teram, &c.* Therefore no man, saith he, may marry his Aunt; and that charge, which he gives concerning the Aunt, would God have to be understood also of the Uncle, which is the Fathers brother, or the Mothers brother; whiles he addes a reason of the prohibition, For she is the near kinswoman of thy Father or Mother;

Thus

Thus *Zanchius* in his book *de Operibus Dei, Lib. 4. de Sponsalibus*, who absolutely condemnes this marriage as incestuous, and indispensable.

Buxtorf, moving the case of *Abrahams* marriage with *Sarah*, and *Jacobs* with *Jochebed*, &c. Leaves it in doubt whether these men were (as the times stood) particularly dispensed with by God, or whether they sinned in thus marrying, even before the law against the law of Nature, by which he holds these matches utterly prohibited. With what forehead then could any Scholar obtrude these false allegations upon an honest client, whether to draw his foot into a snare, or to keep it there, under pretence of favouring what they professedly oppose.

As for the modern Jews, to whom he stretches out his hand for succour, it matters little what they now teach or doe; they are not more

with-

without God, then without honesty, or credit; Their opinions are fabulous, their judgement frivolous, and their practise not worth our knowledge or regard.

I rather descend to the resolution of our own Church; That our ever honored Mother hath passed her condemnatorie sentence upon this Marriage in her Ratification of that Orthodox and just Table of forbidden Degrees, set forth by authority under Archb. *Parker*, what doubt we now? Doe we acknowledge the Oracular Voice of our dear and holy Mother the Church of *England*, and yet question whether we should obey it? Certainly in a case of Conscience, a dutifull sonne (me thinks) should rather hold fit to follow the sacred determination of the Church, then the municipal Acts of the civil State. It is an ill office of those that would set Church and State, Canons and Statutes

tutes, together by the ears even in these points wherein they are perfect friends.

The statute of 32 of *Henry* 8. c. 38. intending to marre the Romish market of gainfull dispensations, and injurious prohibitions, professeth to allow all marriages that are not prohibited by Gods Law, such is this in hand, prohibited, though not in the Letter, yet in necessary inference, and interpretation. The Canon 99. of 1603. hath thus, No person shall marry within the degrees prohibited by the laws of God, and expressed in a Table set forth by Authority in the year 1563. and all marriages so made and contracted shall be adjudged incestuous and unlawfull.

What scruple can arise hence? here is a perfect harmonie betwixt Statute, and Canon. It is a meer Cavil (no better) to take And for Or, as if the meaning were, that all degrees whether

whether prohibited by the law of God, or expressed in that Table are forbidden; This is a foule straine both to Grammer, and to the sense and Scope of the Canon, which plainly intends to averr that all those degrees prohibited in that Table are also forbidden by the laws of God; A truth so certain, that if either self-love, or love of gain did not betray the eye, it is a wonder how it should abide a contradiction.

It is observable that neither Statute, nor Canon speak of an expresse prohibition in Gods Law; And the Canon purposely distinguisheth the terms prohibited by Gods Law, and expressed in the Table, as justly supposing, there may be as strong a prohibition in a sense implyed, as verbally expressed: Else, if our Lawes (as is pretended) should give allowance (which God forbid) to any marriages not expressly *in terminis*, for-

forbidden, we should have strange and uncouth mixtures.

God by *Moses* expresly forbad the uncovering the nakedness of Father and Mother; he expressed not the nakedness of Son, and Daughter: He expresly names the nakedness of the Fathers wife, he expresseth not the nakedness of the Mothers husband, He expresly names the nakedness of thy Sister, he expresseth not the nakedness of thy Brother, he expresseth the nakedness of thy Sons Daughter, he expresseth not the nakedness of thy Daughters Son: He expresseth the nakedness of thy Fathers Wives Daughter, he expresseth not the Mothers Husbands Sonne, he expresseth the Fathers Sister, not the Mothers Brother; He expresses the Daughter-in-law not the Son-in-law: Soas by this Rule, if it should be carried onely by meer verbal expressions, a Woman might marry her

Son-

Son-in-law, the Nephew might marry his great Aunt, the Neece her great Unkle, the Daughter might marry her Mothers Husbands Sonne, the Grand-mother might marry her Daughters Son, the Daughter might marry with her Mothers Husband; Were these things to be allowed, the world would be all *Sodome*: These things therefore are of necessity included in the Law by a cleer Analogie, no lesse than if they had been expressed.

But have there been (as he saith) precedents of this match? I am sorry to hear it, surely, the more the worse, and the more need to redresse it: the addition of this, if neglected, would help to strengthen an ill claim. Cousens-german, he saith, have been allowed to marry; What is that to the present case? The difference is as much as betwixt a Nephew and an Unkle; The Unkle hath too much of

the

the Parents both right, and blood, to challenge an equall claim with a Cousen.

If the shutting up, it pitties me to see your worthy Friend driven to this plea; and like a drowning man, to snatch at so small a twigge; *Being done* (he saith) *it ought not to be undone.* Alas! the Canon is peremptory; It is incestuous and unlawfull; what plea is their for continuance? Speak not therefore of either connivence or dispensation; This match is onely capable of a late, but much wished repentance on the Offenders part and a just diremption on the part of the Judges.

Case 11.

Whether it be lawfull for a man to marry his Wives Brothers Widow.

AMongst all the heads of Case divinity there is no one that yeildeth more scruples, then this of Marriage, whether we regard the qualification of the Persons, or the emergency of actions, and events. It is the lawfulnesse of this match that you inquire after, not the expedience, and I must shape my answer accordingly.

It hath been the wisdome and care of our godly and prudent Predecessors, to ordain a Table of all the prohibited degrees to be publiquely hang'd up in all the severall Churches of this Nation, to which all Commers might have recourse for satisfaction: This Catalogue you have perused, and find no exception of the case

cale specified, I know no reason therefore why you may not conclude it not unlawfull.

The question of the Expedience would require another debate, doubtless, in all cales of this nature, it must needs be yeilded, that it were more meet, and safe, since the world yeelds so large a latitude of choice, to look further off. A wise and good man will not willingly trespasse against the rules of just expedience: and will be as carefull to consider what is fit to be done, as what is lawfull; but that comes not, at this time, within your inquiry.

Whiles therefore I give my opinion for the lawfulness of this Marriage with the Relict of the Wives brother, I do no whit clash (as you suggest) with the judgement of *Beza*, and Master *Perkins*, who professe their dislike of such copulations: I shall as readily cry them down for unmeet,

meet, and inconvenient, as those that with too much boldness come over neere to the Verge of a sinfull conjunction; but for the not unlawfulnesse of this match, I did upon the first hearing, give my affirmative answer: and the more I consider of it, I am the more confirmed in that resolution.

That universall rule mentioned by you, as laid down by those two worthy Authors, must indure a limitation *Cujus non licet inire nuptias, ejus nec conjugio licet*; that there is the same degree and force of relation of a third person (in the case of marriage) to the husband, and to the wife; so as proximity of blood in the one, should not be a greater barre, than the same proximity of alliance in the other; Otherwise, many more copulations will fall under censure, then common practice will condescend unto, and that ground of, *uxor pars quædam*

dam viri, The Wife is as a part of the Husband, as it holds not in natural relation, at all, so not in all conjugal; as might be too easily instanced in divers particulars.

And if there were not some difference in these relations, those second persons which are interessed in the Husband, or Wife, might not come neer to the next in affinity to them; For example, my Brother may not marry my Sister, therefore by this rule, he might not marry my Wives Sister, and so it should be unlawfull for two Brothers, to marry two Sisters; than which nothing is more ordinary, or lesse obnoxious to disallowance.

That general rule therefore, must be restrained necessarily, to the first rank of affinity, if we descend lower, it holds not. For further explanation, our Civilians and Canonists are wont to make two kindes or degrees of

Affinity, The one Primary, the other Secondary; In the first, is the affinity betwixt the Husband, and the Consens of blood to his Wife, or, *è converso*; which indeed, is justly held no lesse for a barre of marriage, than his own natural consanguinity; for that is an affinity contracted upon interest of blood, by vertue of that intire union, betwixt man and wife, whereby they both become one flesh; The Secondary affinity is that, wherein there is another Person added moreover to that first kinde, now mentioned; the affinity arising onely from the interest of an affinity, formerly contracted, not from consanguinity; and this is not so binding, as either to hinder a marriage to be contracted, or being contracted, to dissolve it.

In this rank are the Brothers wife, and Sisters Husband; and therefore, upon the decease of the Brother and Sister, the Husband of the Sister deceased,

ceased, and the wife of the deceased Brother may marry together, as Dr. *Nicholaus Everhardus* out of *Richardus de Media Villa*, and *Panormitan*, hath clearly determined *; Of this kinde is the Marriage now questioned, which therfore doth not fall within the compasse of the prohibition, *Secundùm genus affinitatis, &c.* The second kind of affinity, which is by a Person added unto the first kinde is no barre to Marrimony; And with this judgment I find no reason why I should not concurre, but if any man think that he sees just ground to entertain a contrary opinion, I prejudge him not, but modestly leave him to the freedome of his own thoughts.

* Consil. Matrimonial. Germanor. Consil. 5.

Case III.

Whether an incestuous Marriage contracted in simplicity of heart betwixt two Persons ignorant of such a defilement, and so farre consummate as that Children are born in that wedlock, ought to be made known and prosecuted to a dissolution.

IT is a question (as it may be put) full of doubt and intricacy, Parallel whereunto, and eminent in this kind, was that case, which I had long since, from the relation of M. *Perkins* and since that, have met with it in the report of two several German Authors.

The case thus: A Gentlewoman of great note in those parts, being left a Widow, had her Son trained up in her house; who now having passed the age of his puberty, grew up, as in stature, so in wanton desires, earnestly soliciting

soliciting her Chamber-maid to his lust; she had the grace, not onely to repell his offers, but being wearied with his wicked importunity, to complain to her Mistresse, of his impetuous motions: The mother out of a purpose to represse this wild humour in her Sonne, bids the Maid, in a seeming yeeldance to make appointment the night following with him, at which time she would change beds with the Maid, and school the young man to purpose. This being accordingly done, the Devil so farre prevailed with the Mother, that instead of chastising, she yeelded to the lust of her Sonne, and by him conceived a Daughter: and now finding her self to grow bigg, for the hiding of her shame, she retired secretly to a remote part of the countrey, where she unknown left the burden of her womb, and took order for all care and secrecy of education: After some

years the Mother thinks fit to call home her concealed issue, under the pretence of a Kinswoman, and gives her such breeding in her house, as might become the Child of a Friend: The maid grew up to such comelineſſe, both of perſon, and behaviour, that the Sonne, now grown a Man, fell into paſſionate love with her, and in ſhort, married her, little thinking that he was now matched with his own Daughter, begotten by him of his own Mother: They lived lovingly and comfortably together, and had divers Children betwixt them. Onely the Mother, who was alone conſcious of this monſtrous copulation, began to finde an hell in her boſome; and in a deep remorde, made the caſe, at laſt, knowne to ſome learned Divines of that time, who beſtowed many ſerious thoughts upon ſo uncouth a buſineſſe; and finally agreed upon this determination, That

all

all circumſtances throughly weighed; the penitent mother ſhould after a ſound humiliation ſecretly make her peace with God, for ſo foul and prodigious a ſin; but that the knowledge of the horrible inceſtuouſneſſe of this match, ſhould ſtill, and ever be concealed from the young couple, who thought of nothing, but a fair and honeſt legality in this their conjunction.

The deciſion of this point comes ſomewhat home to yours; to ſpend my opinion therefore in this caſe, I find no reaſon, all things conſidered, to vary from their judgement.

I ſay then, that the mothers ſinne was not more haynous in yeelding to ſo abominable an act of inceſt with her Son, than in ſmothering the ſeaſonable notice of it for the preventing of a worſe inceſt with her Daughter; for that firſt act of her inceſt was tranſient, but this inceſt which was

occasioned by her silence was permanent, and derivable to her posterity: She ought therefore, though to her perpetual shame, when she saw an inclination in her Sonne to so foulely-unnatural a match, to have forestalled it by a free confession; and to have made him sensible of so odious a procreation: Which not being done, it must needs be said, that, as the first act of the Sonne was a voluntary fornication, but an involuntary incest; so this incestuous copulation of the Sonne with the Daughter, was involuntary in them both; and there cannot be an actual sinne, wherein there is not a consent of the will.

On the one side, it is shamefull to think that so grievous a sinne should passe without some exemplary censure, and that so foul blood should be propagated to succeeding ages, for want of the timely intervention of a vin-

vindicative authority; but on the other side, it would be well considered what miserable inconveniences, yea mischiefs would follow upon so late a discovery; First all honest hearts are put into a just, but unprofitable horrour, to think that such a flagitious wickedness could be committed; Then the Mother who had rinced her soul, with a fountain of tears, for so hatefull a miscarriage, and reconciled her self to that God, who was the onely witnesse of her sin, should be so late exposed to the unseasonable shame of that world, which never was privie to her offence.

As for the young couple thus prodigiously conjoined, how could they choose, upon the too late notice of their so deplorable condition, but run mad for anguish of soul, and wear out the rest of their dayes in shame, and sorrow; And for the children born to them in so detes-

able a wedlock, whom they had formerly beheld with complacence, and comfort, as the sweet pledges of their conjugal love, how must they now needs look upon them, as the living monuments of their ignominie, and loath them as the most basely-begotten imps of a worse than beastial copulation. And when riper age should bring that unhappy off-spring forth into the world, how should they be every where pointed at, and hooted after, as some strange aberrations of nature; all which are avoyded by this secrecy.

But if on the other side you shall reply that this one evill is more than equivalent to all these; that in the mean time, these parties live in a continual Incest, and traduce it to following generations; I must put you in minde, to distinguish, betwixt the state of Incest, and the Sin of Incest; It is true, they live in a state of In-

Incest, but from the sin of Incest they are excused by an ignorance, altogether invincible; an ignorance both of the original fact, and of their mutual relations; for it is to be supposed, that had they had the least intimation of the natural interest of Father, and daughter, they would with much indignation have defied so foul a commixture, which even brute creatures (if we may believe histories) have by the instinct of nature abominated, and upon after knowledge, revenged.

And if any light of knowledge should have broken forth unto the parties, of that condition, wherein they stood, then to have continued under that state of Incest, but an hour had been damnably sinfull; now all those inevitable consequences of shame and horrour must have been sleighted and forgotten, and must have shut up in a sodain dissolution.

But

But, as there are many degrees of incest; and the sin is so much more, or lesse haynous, as the p.rties are neater, or more remote; I perceive the case intimated by you, concerns a lower rank of incestuous copulation, namely, an incest arising from a mans carnall knowledge of a person too neere in blood unto her, whom he afterwards marrieth; The fact known only by one, who now doubts whether he be not bound to revele it: And why not sooner, when so faulty a match might have been prevented? Why solate, when the remedy intended, would be as noxious as the disease? Why at all, when there is no necessity, or use of the revelation? This question starts another more universal, how farre we may, or ought to make known the secret sin of another? Doubtlesse to prevent some enormious act, which may follow upon our silence; or upon

on the urging of lawfull authority, when we are called to give evidence concerning a fact questioned; Or to antevert some great danger to the publique, to our selves, to our friend, we may, and must disclose our knowledge of a close wickednesse; Or if the act be so hainously flagitious, and redounding to so high dishonour of God, as that our conscience tels us we shall participate of this sin in concealing it; our holy zeal shall herein bear us out in a just accusation; although in this case, heed must be taken, that our single crimination may be so carried and made good by circumstances, that it draw us not into the perill of a slander; But, without these, I cannot see, that the revealing of a secret sin, can be construed any otherwise, than an act of Detraction, than which, nothing can be more odious and prejudiciall to humane society. We have learn'd from

from *Aquinas* that there are eight wayes of this hatefull practise; whereof four are direct; the raysing of a false crime; the amplifying of a true crime; the disclosing of a crime secret, and the sinister construction of anothers fact. To these, I must adde, that even where the act is such as challengeth a revelation, the time may be unseasonable, and past the date; You know that the notice of treason, if too long smothered, draws the concealer into danger; and in this case, though there be no perill in the silence, yet there may be injurie: Shortly, this sin, if ever, should have been so early made known to the party concerned, as might have prevented the making up of a match secretly sinfull, and have convinced the agent of a foul illegality, whereof he was ignorant. But now thus overlate, would break out to an unprofitable vexation; since this crime which might

might juſtly have hindred the marriage from being contracted, ought not to have the force, after ſo long intermiſſion, and ſucceſſe of an intervenient wedlock, to diſſolve it. The time was, when the Miniſter in a ſolemn preconization, called you either *then to ſpeak*, or *for ever after to hold your peace*: had you then ſpoken it might have been conſtrued as Zeal, now, not to hold your peace, will be interpreted no better than malice.

AN

AN ADVERTISEMENT TO THE READER.

I Have been earneſtly moved by ſome judicious friends, to goe on with this ſubject, and to make up a compleat body of Caſe-Divinity, both practical, ſpeculative, and mixt, whereof I confeſſe

confesse there is great defect in our language. But I remember the talke which Plutarch reports to have been betwixt * Crassus, and King Deiotarus, two old men, but great undertakers. Crassus jeeres Deiotarus for laying the foundation of a new City in his decayed age; Deiotarus twits Crassus for going about, in the like age to subdue the warlike Parthians; both

* Plut. in vita Crass.

justly

justly supposing our decrepit age a just dissuasive from venturing upon great enterprises; Although herein I should not want a worthy precedent, that honor of Navarre, Martinus Azpilcueta, *who at ninety yeers finished the fourth Edition of that his elaborate Manuall of Cases of Conscience. But as for me, I am sufficiently conscious of my own inabilities for so long, and difficult a worke; Onely*

this

this, I shall willingly profeß, that such scruples as I meet with in my way, I shall not allow my self to balk; and shall leave the answers upon the file. In the mean time, let me incite some of our many eminent Divines, whose wits are fresh, and bodies vigorous, to goe through with so usefull a work; Many years are passed since my ancient and learned Colleague, Dr. Ralph Cudworth told me that he had with

with much labour finiſhed that taske, and devoted it to the preſſe, which yet ſleeps in ſome private hands. It were happy if his worthy Sonne, the juſt heir of his Fathers great abilities, would make ſtrict inquiry after it, and procure it to the publique light, for the common benefit of Gods Church both in the preſent, and ſucceeding ages.

The End.